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Imprimatur,

Orl. Bridgeman.







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AN EXACT  
Abridgement  
IN ENGLISH,  
Of the  
CASES  
REPORTED

By Sr. FRANCIS MORE K<sup>t</sup>.  
Serjeant at Law.

With the Resolution of the Points in Law  
therein by the Judges.

Collected by WILLIAM HUGHES  
of *Grays-Inn* Elq,

L O N D O N,  
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1. The first part of the document is a list of names and addresses, which are arranged in a columnar fashion. The names are written in a cursive script, and the addresses are written in a more formal, printed style. The list includes names such as "John Smith", "Mary Jones", and "Robert Brown", along with their respective addresses.

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There

**T**Here is newly extant an  
**ABRIDGEMENT** of  
the Three Volumes of the **REPORTS**  
of Sir George Croke K<sup>t</sup>. of all such Select  
Cases as were adjudged in the Courts of  
*Kings Bench*, and *Common Bench*, during  
the Raigns of *Q. Elizabeth*, *King James*,  
and *King Charles*: Collected by the Au-  
thor of this Abridgement.



A N  
 ABRIDGEMENT,  
 OF THE  
 REPORTS  
 OF

Sir *FRANCIS MOORE* Knight,  
 Serjeant at Law.

*Mich. 1. Hen. 7.*

*Capell and Churches Case.*

1.



Writ of Right Patent in the Court of the Castle of *Rising* of the King, was directed *Ballivis suis de Rising*, whereas the proceedings were *senatoribus Curie*, held good; because the Baylifs are to make the Sommons, and the suitors Justice.

*Capell and Aprices Case.*

2. *Replevin*. The Defendant avowed;

That *A.* and *B.* held the Mannor of *H.*

and divers Lands of the Bishop of London, parcel of the Bishops Castle of *S.* by Homage, Fealty, Escuage, and by the Rent for Castleward, & *pro reddit. auxil. Vic.* The Defendant pleaded, That the Castle was utterly decayed, and as to the *auxil. Vic.* de-

B

murred

murred in Law; The Plaintiff was Nonsuit, but the Rents are still paid to the Bishop, though the Castle be decayed.

*Cleydon and Spensers Case.*

3. Resolved, That if an Executor, with his own proper monies pay a debt due by the Testator, he may retain so much of the value of the goods of the Testator in his hands.

*Case of the Sheriffs of London.*

4. The Custome of *London* is: That if a Villein remaineth in the City by the space of a year and a day, without any Claime made of him, he may all time during his life, live in the City Free.

5. Resolved by the Justices, That that which is written after the words *in cuius rei Testimonium*, is parcel of the deed, aswell as that which is written before it.

6. Resolved; It is no principal Challenge, That a Juror is indebted either to the Plaintiff or Defendant.

7. Resolved; In a Replevin: That one of the Jurors was Steward of the Mannor to the avowant, is a principal Challenge.

8. Two are bound each to other to stand to the award of Arbitrators; They award that the one shall make a Lease for years to the other, rendering Rent to the Lessor; the Lease is made, the Rent is not paid; adjudged, the Bond is not forfeit; because Distresse, or Debt, are proper remedies for the Rent; *convr.* if it be awarded, the Lessee should pay the Rent.

9. Debt for not performance of an Arbitrament; Adjudged, It is no plea generally, That he hath performed it; but he must show how he hath performed it.

10. Resolved; It is a good Challenge to one of the 4. Knights who come to impanel the Grand Assise, that one of them is married to the Plaintiffs daughter, and the other 3. shall try it.

11. If a submission be, *de jure titulo & possessione* of certain Lands, The Arbitrators cannot award that one of the parties shall procure the Lord of the Mannor to grant a Copy, holdor that a stranger shall release, because out of the submission.

*Frances Case.*

12. Resolved, That the King by his Letters Patents cannot grant the Lands of a Lunatique to another, to take the profits to his own use, because the King himself is not entitled to them for his own use, but for the use of the Lunatique his Issues, Wife, &c. Otherwise it is of an Ideor, for then the King hath the profits to his own use, making allowance to the Idiot for his keeping.

## Sir Francis Moore's Reports.

3

### *Levet and Lewknors Case.*

13. An Executor recovered in Debt and then dies Intestate, and the Ordinary commits Administration, *de bonis non, &c.* Resolved, the Administrator shall not have a *scire fac.* upon the Judgment; but a new Action of Debt as Administrator to the first *Intestate*.

### *Sir Godfrey Foliamb's Case.*

14. *Quare Imp.* The Case was, A. seised of the Mannor of D. to which Mannor an Advowson was Appendent, granted the next Avoydance to B. and D. *& eorum cuilibet conjunctim & divisim hered. executor. & assignis suis.* The Church voyd: B. presents D. to the Church, adjudged That the presentment of him was good, though he was one of the Granters.

15. The Husband is entitled to Land in the Right of his Wife; Resolved, The Husband alone without joyning the Wife in the Writ, shall have an Action upon the Statute of 8. H. 6. because the words of the Statute are *Expulit & disseisivit.*

16. A man was indicted for a Robbery done in the Foot way, leading from London to Islington; Resolved, That he should have his Clergy, because the Indictment is not of a Robbery *in alta via regia*, nor in the High way, but in a Foot way.

### *Vaughan and Lord Burgh's Case.*

17. In a Writ of Prohibition, there wanted the word (*Offensusus*) Resolved; though after Issue joyned, that the Writ was amendable by the Statute.

### *Baker and Brooks Case.*

18. A Parson granted an Annuity of 5 L. issuing out of his Rectory *pro consilio impenso* to I. S. *Habend. & recipiend.* to the said I. S. and his Assignes. The said I. S. granted it over to I. D. Resolved, That the grant of the Annuity was good: and the Assignee may have Debt for it.

19. *Wast* was brought against *Lessee* for years: He pleaded in Barre, an Accord which was executed; Adjudged to be a good plea.

20. Resolved by the Justices; That the Master cannot Sollicite, Counsel, nor give Money to Counsel in an Action brought against his Servant, for his Servant; but yet he may give what is due to his Servant for his Wages to Counsel for their Fees, and it is not maintenance.

21. Resolved, That the Lord in Ancient Demesne shall have a Writ of Disceit, after a Fine levied, and the Kings Silver paid.

22. If one comes to a Justice of Peace, and complains that I. S. is a Felon, and hath stolen certain goods, and the Justice commands

## An Exact Abridgement of

the party who complaines, to be at the next Sessions and prefer a Bill of Indictment against the Felon, and give Evidence against him who doth accordingly; Adjudged, That neither he, nor the Justice shall be punished in Conspiracy: although I. S. the Felon be acquitted.

23. A man made a Lease for 40. years by Deed, and in the Deed Covenanted and granted to the Lessee, that he might take Convenient Housebote, Firebote, &c. in his whole Wood called S. within the Parish of S. which Wood was other Lands, and not parcel of the Land Leased. Resolved, the grant was good, and the Lessee should have it during the Term, and his Executors shall take the same as his Assignes, and the grant shall not restrain him, but that he shall have Housebote, Firebote, also in the Lands Leased to him.

24. A man seised of a Mannor parcell in Demesne and parcell in service deviseeth to his Wife for life, all the Demesne Lands, and all the services and chief Rents for 15. years; and deviseeth the whole Mannor to another after the death of the Wife. Resolved, That the Devisee should not take any effect for any part of the Mannor, till after the death of the Wife, and that the Heir of the devisor after the 15. years spent, and during the life of the Wife, should have the services and chief Rents.

25. Tenant in Dower makes a Lease for years rendring Rent, and takes Husband, the Rent is behind, the Husband dyes; Adjudged, his Executors shall have the Rent.

26. A man distrains for 10 l. Rents due at Mick. Cattel which were not of the value of 40 s. and afterwards distrains for the Residue. Adjudged he cannot avow, for the distress is not good; and it was his folly so to distrain. But if a man be behind of his Rent several dayes, and he take a distress for one day at one time, and for another day at another time, it is good.

27. Resolved, That a Custome, That a Lessee for years, may hold the Land for half a year after his Term ended, is no good Custome. But the Lord of a Copyhold may by Custome Lease the same for life and 40. years after: and it is good.

28. Upon an Extent, the Sheriff returned, that he hath extended a Tenement at 20 s. paid; but doth not make mention of any House Land, nor pasture which should make the Tenement; Adjudged the Extent was void for the incertainty.

29. If a man be Robbed, and afterwards for money he agree with the Felon, that he will not give evidence against him, for which the Felon Escapes, It was doubted whether he was accessory to the Felon; But it was agreed, That if after the Robbery, he

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perſue the Felon and take his goods of which he was Robbed, and ſo ſuffer the Felon to eſcape, the ſame is a Concealment of the Felony, but he is not Accellary to it.

30. A Women Tenent in Tail makes a Leaſe for years to her Husband and dyes, The Husband being Tenent by the Curteſie ſurrenders to the Iſſue; Adjudged, the Iſſue ſhall avoid the Leaſe.

31. A man ſays, I will you ſhall have a Leaſe for 21. years of my Land in D. paying 10 s. Rent, make a Leaſe in Writing and I will ſeal it; Adjudged, It is a good Leaſe in years by paroll, though no Writings be made of it.

32. Land was let to T. S. *Habend.* to him for life and for the lives of I. his Wife and his Son. *Quere* What eſtate T. S. ſhall have? and if there ſhall be an Occupancy in the Caſe: It was not Reſolved.

33. If my keeper of my Park will not ſerve a Warrant which I ſend him, nor ſuffer it to be ſerved: Reſolved, it is no forfeiture of his Office, but only a Diſobedience and a Miſfeſance, which is not a forfeiture: But cutting down of Trees is a forfeiture of his Office.

34. A man made a Leaſe for years, the Leaſor ſold the Trees growing upon the Lands, the vendor cut them down; The Cattel of the Leſſee which were in the Cloſe deſtroyed the Springs: Reſolved, That the Leaſor could not take the Trees growing upon the Land; and it was a wrong in him to cut them down, and it is not reaſon that he ſhould by his own wrong ſhould compel the Leſſee to encloſe the Lands: wherefore Adjudged it was no Waſt.

35. In a Replevin, the Plaintiff being Leſſee for years prayd in aid of his Leaſor, and upon Iſſue joyned upon a falſe verdict it was found for the Avowant. The Plaintiff and the prayee in aid joyned in Attaint; and pendent the Attaint, the prayee in aid which was his Leſſor dyed: Reſolved, That the Writ ſhould abate; for the prayee is dead who ought to recover the Reverſion by the Attaint; and his Heir ſhould be at great miſchief, If the Attaint be found againſt the then Plaintiff, who then ſhould loſe his Reverſion.

36. Reſolved by the Court, That if an Obligation or a grant be raiſed after the enſealing of it, it is void; but it is otherwiſe of an Indenture, if it agreeth in words with the other Indenture: and it was agreed If a man be bounden in an Obligation which is raiſed, and the Obligation is endorſed with a Condition to perform the Covenants in an Indenture; and the Indenture expreſſeth the debt, notwithstanding the raiſure of the Obligation; the Plaintiff muſt ſhew the Indenture to prove the Bond good.



37. Action upon the Case for words, viz. *Thou art a False Knave, a Wretch, and a Whoremonger*; Adjudged actionable, although for the word *Whoremonger* he might have his remedy in the Spiritual Court.

38. A man hath Issue a Bastard, and after marryes the same Woman, and hath Issue by her, divers Sons; and then deviseth all his Goods to his Children. *Quere*, If the Bastard shall take by the Devise; But if the Mother of the Bastard make such a Devise, It is clear the Bastard shall take; because he is known to be the Child of the Mother.

39. Lessee for years, Proviso he shall not assign the Term, nor any parcel of it, without the assent of the Lessor. Resolved, He cannot give, grant or sell it without assent of the Lessor. But agreed, That the Executors of the Lessee may assign it without assent of the Lessor.

40. Resolved, That if the Lessor makes a Letter of Attorney to his Lessee for years to make Livery of the Land in Lease to a Stranger, who doth it accordingly: That it is not a surrender of his Term, for he doth not make the Livery in his own right, but as Servant to his Lessor, and by his authority.

41. Resolved, That if the Lessor infeoff a Stranger, and makes Livery, the Lessee for years being upon the Land, who agrees to it, It shall enure as an Attornment, and not as a Surrender: but if the Lessee be not upon the Land, then it is not a Feoffment; and when the Lessee enters again he shall have his Term, and the Feoffee the Reversion; and if the Lessee be upon the Land, and denies the Lessor to make Livery, notwithstanding that Livery be made, nothing passeth by the Feoffment, nor is a grant of the Reversion.

42. Lessee for life of a Mannor seizeth an Estray and dyeth before the year and the day passed. Resolved, the Executors of the Lessee shall have it, and not he in the Reversion; for although the Lessee had not an absolute propriety in it during his life, yet when the year is past, the property shall have relation to the time of the Seizure.

1, & 2 Ma.

Stapleton and Tremlocks Case.

43. Debt by Executors of J. S. against A. Tremlock, Administratrix of Rich. Tremlock. The Will was, That the Testator made the Plaintiff and Rich. Tremlock his Executors; but said further

ther in his Will, I will my Friend *Rich. T.* shall pay to my other Executor all such debts as he oweth me before he shall meddle with any thing of this my Will, by reason I have made him one of my Executors for the discharge of the said Debt. The Defendant averred *Tremlock* in the Will, and *Tremlock* the Intestate to be one and the same Person, and said, He in his life had paid to the Executor the debt in demand, and all other debts which he owed at the time of the death of the Testator. Adjudged, that the Defendants plea was not good, because she ought to have pleaded an Acquittance of the said debt; for that payment without an Acquittance is no plea; and for the other Debts she ought to have shewed them certain, and pleaded payment of them; and she should have shewed that *T.* administered with the other Executor.

*Agar and Bishop of Peterborough's Case.*

44. *Quare Imp.* And for Title to the Avoidance the Statute of 21 Hen. 8. taking a second Benefice with Cure was pleaded; Issue was upon the Induction. By which it seemed to be admitted, That Admission and Institution did not make the first Benefice void without Induction.

45. Resolved, That upon an Appeal of Manslaughter, the Parry may challenge 20. peremptorily, as well as upon an Indictment.

46. Upon an *Habere facias seisinam* upon Recovery of Dower of 3. Mannors. Resolved, The Sheriff cannot give her seisin of one Mannor; but he must give her seisin of the third part of every Mannor. But if the Recovery be of all Lands, viz. Meadow, &c. Pasture; the Sheriff may assign her her Dower in the Meadow only.

*The Queen and Deans Case.*

47. Writ of Disceit by the King and Queen upon a Fine levied by C. to D. of Lands in ancient Demesne, who rendred to C. for life, reversion to K. D. dyed pendent the Writ. Resolved, The Writ shall not abate, because it is in the nature of a Trespasse, which doth not demand the Land, but is to punish the Disceit.

*Tuck and Frenchman's Case.*

48. A. seized of Lands in Fee holden in soccage, devised the same to C. F. and the Heirs males of his body; and if he dyed without Heirs males of his body, the Remainder, &c. C. F. dyed without Issue male of his body. Resolved, That C. F. had not general tail, but special tail to him and the Heirs males of his body.

*Joslin and Chellsons Case.*

49. *Assumpsit*, In consideration of a Marriage of the Son of the plaintiff with the Defendants Daughter; the Defendant assumed to pay to the Plaintiff 40 l. in 7. years next following by equal

portions; Found upon *Non Assumpsit* for the Plaintiff; and because one of the 7. years was to come at the time of Action brought, the Judgement was stayed.

3, & 4. *Ma.*

*Eaton Colledge Case.*

50. A Lease was made by the Dean and Chapter of the Colledge was of *Eaton*, whereas they were incorporated by the name of *Dean and Chapter* of the Colledge of *St. Maryes* of *Eaton*, Resolved the Lease was void for the Misnomer.

*Stakes and Porters Case.*

51. Debt upon an Obligation against the Defendant, Executor of *I. S.* who pleaded that he was not Executor, nor administrated as Executor; It was found that he received a Debt of 7 *l.* which was due to the Testator, and made an Acquittance thereof, and took possession of other Goods of the Testator, and converted them to his own use. Adjudged, That it was an Administration.

*Hill. 2 Eliz.*

*Helior and Okedens Case.*

52. A Lease was made to *I. S.* of the Mannor of *F. Habend.* from *Mich.* last past for 20. years; and by the same Deed it was agreed, That after hold expiration of the 20. years that the said Lessee, his Wife and their Son should have, hold and enjoy the Mannor, *Habend.* for their lives, & *cuiuslibet diutius vivent*, and he made a Letter of Attorney to make Livery *secundum formam* of the said Grant and Lease. Resolved, If the Deed was delivered by the Attorney, and Livery made at one time, it was a good Lease for years, with a Remainder for their Lives; but if the Deed was first delivered by the Lessor to the Lessee, and after Livery and Seisin by the Attorney, there the Livery was void.

*Thorn and Rolles Case.*

53. *Dower.* The Defendant pleaded that the Husband of the Demandant was alive at *Canterbury*, in *com. Kent.* The Defendant said, her Husband dyed at *F.* in the Parish of *P.* in the said County of *K.* upon which they were at Issue; Day given to make Proofs, the Plaintiff examined her Witnesses in Court; the Defendant examined no Witnesses. Judgement was, the Plaintiff should recover her Dower.

*Hill.*

Hill. 3 Eliz.

*Corket and Sheldons Case.*

54. *A.* in consideration of a Marriage intended betwixt him and *B.* by Deed covenants with *S.* to execute an Estate in Fee to the use of the said *A.* for life, and after to the use of the said *B.* for by and untill the Son, or one of the Sons of the said *A.* of the body of the said *B.* begotten, shall accomplish the age of 21. years. The Marriage takes effect. *A.* dyed without Issue between them, and before any Issue had. Resolved, That *B.* had a good Estate for life before any Issue, and in Case there was no Issue. But if there had been Issue which had accomplished 21. years, the Estate of *B.* had been abridged.

3, & 4 Eliz. in C. B.

*Gower and Andrews Case.*

55. In Trespas for cutting down of Trees; the Case was, *A.* a Woman in her Widdow-hood by Indenture bargained and sold to *B.* and *C.* all those Woods, Underwoods and Hedgerowes, as have accustomed been used to be fallen and sold, standing, growing and being in, upon and within the Mannor of *D.* to have and to hold for the life of the said *A.* *B.* dyed, *C.* survived, and cut down by vertue of the said Bargain the Woods and Underwoods growing and standing at the time of the making of the said Deed. Resolved upon this Bargain, when the Vendee had once cut down the Woods and Underwoods, that he could not cut them again, if Woods were standing and growing; notwithstanding the words in the Grant, viz. *To Have, &c.* for the life of the said *A.*

*Wilson and wife Case.*

56. In Trespas for taking of his Cow: The Defendant justified that he was seised and held of *I. S.* as of his Mannor of *C.* by Fealty, rent & suit of Court of *I. S.* And that within the said Mannor the Custom was, That the Lord of the Mannor time out of mind, &c. after the death of every Tenant of any Messuage, or Tenements of the said Mannor dying seised, used to seise the best Beast of the Tenants found within the Mannor for an Heriot; and if the Tenant had no Beast, or if it were esloyned out of the Mannor before the Lord seized it, Then the Lord had used to seise the best Beast Levant and Couchant upon the Messuage, Lands and Tenements. It was demurred upon the

the Custom, and it was adjudged that the Custome was void and unreasonable; and Judged for the Plaintiff.

57. An Infant by his *Prochein Amy* brought a *Scire facias* to execute a Plea by Fine limited to his Grandmother. The Defendant prayed that the Attainder might demur. Resolved it should not: But if the Defendant had pleaded the Deed of the Ancestour of the Infant in Barre, there the Plea should have stayed.

### 3 Eliz.

#### *Austin and Bakers Case,*

58. Attaint was brought into the *Common Pleas* upon the Statute of 23 E. 3. cap. 3. against the Executors of I. S. and the Terre Tenants: and adjudged it was well brought, although the Statute is that the Attaint shall be between the Parties of the first Judgement.

59. A Subsidy is granted by Parliament, That every one who expends in Land above 20 s. shall pay. A man is assessed, and before payment he dyes; the Lands in the hands of the Heir shall be charged with it, because it is a Duty upon Record; and the Land chargeable with it.

60. Judgement being against two; upon an *Avowry* in *Replevin*; They brought an Attaint, depending which, one of them dyed: It was adjudged, that the Writ should abate; and it differs from the Case of Nonsuit; for the Nonsuit is the Judgement of the Court, that the Heir may proceed in Suit; but when one is dead it is not so, for then no act is done by the Court.

61. Note, It was resolved, That after a Verdict given, it is no Plea for to say, that the Jurors did eat and drink: mean between the Court and their Verdict given; but such Exception ought to be before the Verdict given.

62. A Lease for years, the Remainder for Life, the Reversion in Fee; Lessee for years committed Waste; he in Remainder for Life dyed. It was holden by the Justices, That he in the Reversion in Fee should have an *Action of waste* for waste done before the death of him in the Remainder; because that the mean Remainder was the Cause that he could not have the Action at the first: but when that Estate is ended, the Action is mainenable, because it was to the dis-inheritance of him in the Remainder in Fee.

63. Tenant in Dower had power to cut down the Trees growing upon the Land, and she covenanted with him in the Reversion, that

it

it should be lawfull for him every year to cut down 20. Trees: and afterwards she cut down and destroyed all the Trees: It was the opinion of the Justices, That an Action of *Covenant* did lye against her; and it was agreed by them, That if a *Covenant* be, that it shall be lawfull for the *Covenantee* to take the Trees and sell them, or impley them to his own use; That in that Case the *Covenantor* cannot cut down the Trees, because he hath given a propriety in the Trees to the *Covenantee*.

*Mich, 2 Eliz.*

64. *Trespas*. The Case was, A man made a Lease for years of Lands, a Stranger entred upon the Land let, and cut down Trees growing, and made them Tymber; and carryed unto the Land where the *Trespas* is supposed, and then gave the Tymber to the Plaintiff: and the Defendant entred into the Land and took the Tymber. It was the opinion of the Justices, That in all Cases where a thing is taken wrongfully, and altered in form, If yet that which remains is the Principal part of the Substance, the Notice of it is not lost; and therefore if a man takes Trees, and makes Boards of them, The Owner may retake them, *quia major pars substantiae remanet*, and so in the principal Case; But if an House had been made of the Tymber, there it had been otherwise.

65. Father and Son made a Feofment in Fee with VVarranty, the Father dyed: The Feoffee impleaded, brought a *Warrantia Chartae* against the Son, *unde Chartam Patris sui habet cujus haeres ipse est*, and in his Count shewed the Deed was made by them both: It was the Opinion of the Justices, the Count was agreeable to the VVrit; and that the VVarranty against the Son was double, the one of his Father, the other of himself; and that each of them warranted the whole: so the Action well brought.

66. Resolved by the Justices, If Lessee for Life makes a Lease for years, and afterwards purchaseth the Reversion and dyeth within the Term, the Lease for years is determined: But if one who hath nothing in the Lands makes a Lease for years, and afterwards purchaseth the Lands and dyes, if it be by Indenture, his Heir is estopped to avoid the Lease.

67. Two Copartners are, one grants her Part, and warrants that the Grantee shall have and hold it in common without partition; It is a void Warranty, because it is against Law.

68. A Lease was made to Husband and VVife for years, Provided, that if the possession of the Lands came to the hands of any other

ther than the Husband and Wife, and their Issue; then upon tender of 100*l.* it shall be lawful for the Lessor to reenter, the Husband dyed: the Wife took an other Husband, the Lessor tendred the 1000*l.* It was the greater opinion of the Justices, That the Condition was not broken, because that the second Husband was not possessed by vertue of the Lease, but in the right of his Wife; But the Court doubted of it. It was adjourned.

68. A *Capias ad satisfaciend.* was awarded, and an *Extent*; and between the date of the Writ, and before the Sheriff took the Inquisition, the Defendant sold his Goods. It was the Opinion of the Justices, That the Sheriff might extend the Goods which were sold: and it was said, That if the Tenant in a *Precipe* alien after the date of the Writ, and before the Return, yet he continues Tenant to the Action.

69. Note it was holden by the Justices, That if an Infant for Monies by Indentures bargain and sells Lands, and afterwards levyes a *Fine sur concessans de droit* with Proclamations; the Indenture is not void, but voidable, and the Use passeth to the Bargainee, and then the Fine being levied upon it the Bargain is irrevocable, if not by Error.

70. Lord and Tenant by Knights Service, the Tenant dyes, his Heir being a Daughter within age of 14. years, the Lord seizeth the *VVard*, and after at 13. years she marryeth without the assent of the Lord: It was the opinion of *Wray*, Justice, That the Lord should not have the forfeiture of the Marriage without tender; but otherwise of the value of the Marriage; because that *de mero jure pertinet ad Dominum*.

71. Lessee for years hath Execution by *Elegit* of the Moyety of the Rent and Reversion against his Lessor, the Lease being upon Condition: Resolved, That it is a suspension of the whole Condition during the *Extent*; and although but the moyety of the Rent was extended; yet the entire Condition was suspended and cannot be proportioned being entire.

72. A man was bound in a Bond to make a sufficient Lease to the Obliger before such a day, the same to be made at the Costs of the Obliger: In Debt upon the Bond it was a holden a good Plea, That the Plaintiff did not tender the Costs to him, and if then that he was ready, &c.

#### The Lord Windsor's Case:

73. A *Precipe* was brought against him: It was, *Edwardo Domino Windsor de London Militi*, and because the word (*Militi*) was after the name of Dignity, the *WVrit* abated.

74. *Entry sur Disseisin* was brought, the Writ was of an *Entry in duas*

*du as partes in tribus partibus dividend. unius Messuagii: and not in duas partes unius Messuagii, in tribus partibus dividend. and yet adjudged good.*

Pasch, 3. Eliz.

75. Debt upon Obligation conditioned if the Obligator pay all such sums which he was Obligated to pay by his several writings Obligatory: that then, &c. The Defendant said, That there were not any writings Obligatory by which he was to pay any sum; Adjudged to be no plea: because it is repugnant to the Condition, and he is estopped to say against the Condition.

76. *Wast.* The Case was: Lease for life, Covenanted to repair the houses at his proper Costs during the Terme. The groundfells of the houses were rotten, and the Lessee cut down trees upon the Land to repair them; Resolved he might do it, and it was not *Wast*, and his justification of it good notwithstanding the Covenant which shall not exclude him from that benefit which the Law gives him.

77. Debt against an Executour of an Executor; the Defendant pleaded, That the Executor his Testator had fully Administred, and so nothing in his hands. It was found, that he had Assets; upon which a *Fieri fac.* issued to the Sheriff who returned he had nor any thing: adjudged a void Return, and the Sheriff was amerced; for if he had not goods of the Testator, he should be payed of his own goods, because when he pleads the first Executor had fully administred, he doth not deny but Assets remained after the death of his Testator.

78. A grant was made *per nomen Messuagii sine tenement.* It was holden by *Dyer*, that neither a Garden nor Land do passe by the Grant, but nothing but the House and Carthage; *weston* said, the Garden should passe with the Messuage with an Averment that they have been occupied together. *Quere.*

The Earl of *Worcesters* Case.

79. Debt was recovered against the Earl, and the Plaintiff had an *Elegit* in the County of *M.* The Sheriff returned he had no goods nor Carrels, Land nor Tenements within his County: It was holden that after the year he might have a *scire facias*: and upon that that an *Elegit*: And it was holden that the party might divide his Execution; and have several *Elegits* into Several Counties; and to that purpose diverse Presidents were shewed by *Lenard* one of the Prothonotaries.

Lady *Audleys* Case.

80. *Detinue.* A Woman delivered Goods to rebayl, and after took Husband, who after his Intermariage released all Actions



to the Baylee; Adjudged the Release was good; for that by the Intermarriage the Property of the Goods was in the Husband.

81. *In Dower.* The Tenant vouched the Heir of the Husband within the same County, and he appeared and entred into Warranty, as he who had nothing by Discent; Judgement shall be given presently, and the Sheriff by a special Writ shall put the Woman in Possession of all the Lands of the Tenant; and that to avoid Circuit of Action betwixt the Tenant and the Vouchee. Then the Question was, If the Heir had nothing by Discent but Lands intayle, if they should be assigned to the Woman for her Dower: It was the greater opinion, she should not have Dower of the Lands intailed, because the Execution for the Wife against the Vouchee is given only for Avoidance of Circuit of Action, betwixt the Tenant and the Vouchee; and therefore it follows, That she shall not have Execution of other Lands whereof the Tenant could not have Execution against the Vouchee, and the Lands intayled cannot be rendred in value.

82. A Lease was made to 3. *Habendum* to them and the Survivor of them *modo & forma sequente*, viz. to one for Life, the Remainder to another for Life, the Remainder to the 3d. for Life; It was holden they are not joynt Lessees by this Lease, but they take by way of Remainder: but if the *viz.* had been before the *Habendum*, or no *Habendum* had been, then they had taken a joynt Estate, notwithstanding the Limitation by the *viz.* because the *viz.* is but a declaration of the precedent Text, and shall not confound the same: *& mala est expositio quæ corrumpit textum.*

*Skernes Case.*

83. *A.* by Indenture let an House to *I. S.* for 40. years. The Lessee by the same Deed covenanted with the Lessor, that he would repair the House during the Term; and that it should be lawfull for the Lessor his Heirs and Assigns after the 40. years past, every year during the Term to come into the House to see if the Reparations were sufficient by the Lessee, his Executors or Assigns; and if it should be repaired upon the view of the Lessor, that then the Lessee should hold the Lease during 40. years after the first years ended. *I. S.* granted over his Term by these words, *Totum interesse, terminum & terminos quæ tunc habuit in tenementis illis.* It was resolved in this Case; That the words in the Assignment did not extend but to the first Term; and therefore the possibility of the future Term did not pass, but that by the Assignment there was a separation between the first Term and the possibility, and by consequence the possibility determined. 2ly. That the want of the word (*Assignes*) did not hinder the possibility; for it was a thing inherent, which passed with-

out such word ; But yet they held, That if there had been the word ( *Assignes*, ) yet the Assigns could not have taken the possibility.

84. Debt upon *Obligation*. The Defendant said he was to pay 20 l. at a day, and at the time of the delivery there was not any Day written in the Deed, but a *space* for it; and that after the Delivery the Plaintiff put in a Day, and so *Non est factum*; It was conceived, the Plea had been better to have set forth the special matter, *per quod scriptum prædict. perdidit effectum*, and Judgment if Action.

85. Lands were given to Husband and VVife in taylor: The Husband by Fine and Deed inrolled aliened the Land and dyed. Resolved, That the VVife might enter by the Statute of 32 H. 8. although the words are, *Of Tenements, being the Inheritance or Freehold of the wife*; And it was holden, That by the Entry of the VVife, the Inheritance of the Heir should thereby be continued.

86. A man made a Feoffment to divers persons that they should infeoffe the Son of the Feoffor and his Wife in tail, the remaynder to the right Heirs of the Feoffor, who made the estate accordingly, and the Son dyed: It was Resolved the same was a Joynture within the Statute of 27 H. 3. cap. 10. for although she did not clayme it by the Ancestor himself but by his Feoffors, yet because the Feoffes derive their Estate from the Ancestors of the Husband, it is within the Statute; But if he had bargained and sold the same upon trust to make the Joynture, it had not been within the Statute.

87. Resolved, That an Action upon the Case doth not lye for calling one Adulterer; because that is not punishable at the Common Law, but in the Spiritual Court.

88. Two Joynt tenants make partition by word, and for equality of the partition one assignes to the other a Rent; It is void, if he hath not a Deed of it.

89. In a *Præcipe quod reddat*, at the *Nisi Prius* the Tenant made default, and *Petit Cap.* returned, at which day, he in the Reversion prayed to be Received, and was so received by the Rule of the Court, notwithstanding he did not require it at the *Nisi Prius*. 2. By the Equity of the Statute of *West. 2.* he in the remainder shall be received upon the default of the Tenant for life, although the words of the Statutes be *ad quos spectat reversio*.

90. Resolved by the Justices, That the *Coroner super visum corporis* cannot enquire of an Accessary after the Murder.

91. Two were jointly and severally bound in an Obligation.  
In

in Debt brought; the Defendant said, the Plaintiff recovered against the other the same Debt and had Execution; and adjudged a good plea, notwithstanding it was not shewed by what proces he had Execution; because the Execution is on Record and shall be tried by the Record; but if he paid the monies *in pais* to the Plaintiff, and not in Court, It is not an Execution of the Judgement.

92. A *Recordare* was to remove a Pleint in *Curia nostra*, and the plaint was in *Curia Maria*: Resolved, that for this variance the Record was not removed, for it could not be the plaint whereof, &c.

93. It was said, If the Defendant will plead to the Writ, matter apparent within the Writ, he must begin his plea with *Petit Judicium* of the Writ, but if he plead matter *de hors*, as Joyntenancy or Nontenure, &c. he shall make the conclusion in such manner only, and not the beginning.

94. *Ejectione firme*: Of a Lease made by the Prebendary *Ecclesie Beate Mariae*: whereof the foundation was *Ecclesie Beate Mariae de Thornton*, and *Thornton* being omitted, the Leaser to make it agree, entertayned the words ( *de Thornton* ) It was the opinion of the Justices, That *non est factum* is no proper plea: because it was once his deed: but he is to shew the special matter, and demand Judgment of Action, vide before

95. A Rent was granted to *I. S.* for life, the remainder to *I. D.* in Fee, *I. S.* dyed, the Rent was behind, he in the Remainder distraind and avowd for the Rent and good; for the grant was good to him in the remainder which took effect with the particular estate, and so adjudged.

96. One made his Will in this manner, I have made a Lease for 21. years to *I. S.* paying but 10 s. Rent; adjudged a good Lease at Will: and the word ( I have ) shall be taken in the present tence.

97. *Replevin*: The Defendant avowd for a Rent charge granted to him, but did not alledge any seisin of it within the years according to the Statute of 32 H. 8. Cap. 2. and yet holden good; for the Statute is to be intended where seisin ought to have been alledged before at the Common Law.

98. *Dower*. The Case was. The Husband made his Will, thereby devised all his Lands to his Wife, ( the now demandment ) during her Widdowhood, and dyed, the Wife entred by force of the Will, and after took Husband: It was the opinion of the Justices, that this estate devised being as great an Estate for her life, and her acceptance of it; she not being Compellable to Marry, was in the nature of a Joynter to her, and a good barre of her Dower.

99. Note by the Justices: If a man seised of a Rent charge be bounden in a Statute, and Execution be sued upon it, the Rent shall be extended in Execution, and yet the Statute *de Mercatoribus* speaks only of the Goods and Lands of the debtrour; and doth not speak of Tenements or other things.

100. I. S. Tenant in tail by Indenture upon Consideration of Marriage Covenants to stand seised to his own use for life, and after his death to the use of his Son and heir apparent. Resolved, there is no change of the use but only during the life of the Tenant in tail.

101. A man seised of Land in the right of his Wife, makes a Lease for life, the remainder in Fee; and afterwards he and his Wife recovers the same Land in a Writ of Entry against the Tenant for life: Dyer held the Wife should be remitted, and no act shall be adjudged in the Wife, for the bringing the Writ shall be adjudged the sole act of the Husband, and not of the Wife. *Quare* if she shall not be estopped by the Record.

102. Note by the Justices, That a Writ of *Curia claudenda*, lyeth of a Close which lyeth in a Field, aswell as where there are 2. Messuages; Courts or Gardens adjoining: But after Imparlance in this Writ, the Defendant shall not have the view.

103. In a *Quid juris clamat*, after Issue joyned upon *Ne dona pass.* at the *Nisi Prius*, the Jury gave a privy verdict, the Court being risen, for the Defendant, and had License to eat and drink; and at another day when the Court was sitting, they returned and gave an open Verdict for the Plaintiff: Resolved, That Judgement should be entred for the Plaintiff; for the last Verdict which is given openly in Court, is the Verdict in fact, and not the first; and the eating and drinking of the Jurours before the second Verdict given doth not make it void.

104. Note by the Justices, where in a *Præcipe quod reddat* brought against Tenant for life, he makes default; and he in the Reversion is received; he shall hear the Count made by the Tenant, and shall answer presently, and cannot have an Imparlance.

105. Resolved by the Justices, That Tenants in Comon cannot joyn in Waste, against their Lessee; but it is otherwise of Copartners, or Joynt Tenants.

106. In Debt, the Defendant pleaded to Issue, and afterwards brought a Writ of Priviledge out of the Exchequer, because he was a person Priviledged therè: The Court disallowed of the Writ, because by his pleading he had affirmed the Jurisdiction of the Court.

*Hawle and Kirkbyes Case.*

107. Covenant upon an Indenture dated 20 April. 4. E. 6. The Defendant pleaded in Bar a Release made 3 Eliz. of all Actions, Suits, Debts, Executions and Demands, which ever before he had or may have *ab origine Mundi*, to the day of the date of the Release; adjudged no bar because it was before the Covenant broken.

108. A man leaseth Lands for years; and afterwards by Deed Indented, bargains and sells the same Lands to the Lessee and his Heirs, without any word of gift or grant in the deed; That nothing passeth if the deed be not Enrolled; for without Enrollment the Freehold doth not passe, and it is not any Confirmation.

*The Lord Sands and Brays Case.*

109. A *scire facias* by the Lord Sands against the Defendant to have Execution of Lands, whereof the remainder was entailed to his Ancestors by Fine; The Defendant said, The Plaintiff was within age and prayed, The *parol* might demur till his full age. The opinion of the Court was, That the *parol* should not demur, and by award of the Court the Defendant was put to Answer.

110. A man bargains and sells his Land by deed Enrolled; The bargainee, by the same deed Covenants, That if the bargainor or his Heirs pay to the bargainee or his Heirs 20 l. such a day, that then the bargainee and his Heirs and all other seised should be presently seised to the use of the bargainor and his Heirs, before the day the bargainor tenders the money to the bargainee, and he refuseth it; Resolved, that by the Tender, the Covenant is not performed; for the Covenant alters the use upon the payment, and nothing rests in the bargainor till payment.

111. It was Resolved by the Justices, That if a man by deed Leaseth certain parcel of Lands and names them severally, and afterwards the Lessor raseth the deed, and puts one parcel out of the deed; that the whole deed is void for the deed is entire in it self, and cannot stand for part, and be void for part: But yet notwithstanding the Lease being of Lands the Lessee may plead it as a Lease *parol*.

*Tunit. 4. Eliz.*

112. Tenant in tail, the remainder in Fee, Tenant in tail aliens and dyes without Issue; he in the Remainder recovers in a *Formedon* brought being within age; Adjudged he shall not be in Ward, because

cause a Right of remainder descended only to him, and not a Remainder in possession.

113. A man made a Lease for life, and afterwards was bounden in a Recognizance, and afterwards he granted the Reversion to another, and the Tenant for life attorned and dyed; the grantee entered, and the Recognizance sued Execution against the grantee; If the Execution was well sued upon the grantee, *Quare*; the Justices were divided in opinion.

114. Debt upon Obligation, The Defendant pleaded, that the plaintiff by deed Indented betwixt them Covenanted and granted that if the Defendant paid him certain monies at a day certain, the Obligation should be void, and that at the day he rendered the money and he refused it: The Court held the plea good without saying *unconscio*.

115. Debt upon Obligation, the Condition was, if the Defendant paid to the Plaintiff or his assignes 20l. at such a day and place, that then &c. The Defendant said that the Plaintiff appointed one A. to receive the money of him at the day and place, and that he rendered the same accordingly to the said A. which he refused. Resolved, the plea was good, without alledging payment in fact.

116. A. made a Feoffment in Fee, rendering rent with Clause of distress, and afterwards bound himself in a Statute; and the day being incurred, Execution was sued by the Conusor, and the Sheriff returned the Conusor dead, and that he had extended the Rent: The Heir of the Conusor within age brought an *Audita Querela*; and adjudged it did well lye, because there was an Exception in the Writ of Extent, that if the Lands are descended to any Infant, that the Sheriff should surcease to extend.

117. Debt against Executors, at the *Pluries Disfring* as they appeared, and pleaded that they had fully Administred the goods of the Testators, before any Notice given them of the Suit. The Plaintiff said, That upon the Original the Sheriff had returned them Summoned; It was the opinion of the Court it was no Estoppel against them, for it may be they were never Summoned, notwithstanding the return of the Sheriff.

The Archbishop of York's Case.

118. An action brought by him upon the Statute *de scandalis Magnatum* against I. S. because he put in a slanderous Bill against him, before the President of the Council of the North; surmising, that he was a Covetous and Malitious Bishop. Resolved, the words were not sufficient to maintain that Action.

119. A. seised of a Mannor holden by Knights service, devised 2. parts thereof to 2. strangers severally, and all the Residue he devised

to his Heir in Tail, the remainder over to another in Fee; It was the opinion of the Justices, that when he had devised 2. parts, he had done all which he could by the Statute, and the devise of the residue was void; but the devise shall enure to the Heir of a third part of the 2. parts, that the devise which takes effect at the death of the devisor may take effect, and that especialle by reason of the Remainder; and so the Heir shall have a third part of the 2. parts; vide 3 H. 6. accordingly.

120. A. made a Feoffment in Fee to the use of another in Tail, the Remainder to the right Heirs of Tenant in Tail in Fee, *cestuy que use* in Tail before the Statute of 27 H. 8. made a Feoffment in Fee, the Feoffee dyed; It was the opinion of the Justices, That when the Feoffee dyed during the life of *cestuy que use* in Tail, the first Feoffees could not enter, for the descent was when they had no title of Entry, for by the Feoffment the Feoffee had title during the life of *cestuy que use* in Tail; wherefore during his life they could not enter, nor make claim; But they agreed that the Heir of *cestuy que use* in Tail had not any remainder but by the Entry of the Feoffees.

121. A man made a gift entail upon Condition that if the Donee or his Issue aliened, that the Donor might enter; the Donee aliened and afterwards dyed without Issue; If the Donor might enter, or was put to his *Formidon* in Reverter, *Quere*; for the Justices were divided in opinion, and it was not Resolved.

122. The reversion of a Lease for years was granted one moyety to one man, and another moyety to another; The Lessee committed Wast and then the Lease determined; They brought actions of Wast in the Tenant; It was the better opinion, that they might well joyn in the action, because they are not now to recover in the realty which is the Land Wasted, but only damages; but if the Term had continued, it had been otherwise because then the Land was to be recovered.

123. An Indenture of Bargain and Sale was Enrolled the last day of the 6. Moneths, not accounting the day of the date of the Indenture for part of the 6. Moneths. It was Resolved, that the Enrolment was good; for the day of the date shall not be accounted part of the 6. Months limited by the Statute; for the date and the day of the date is all one, for the date is all the day. And it was said, It was not like the Statute of 32 H. 8. of Leases, where it is said, A Lease made by Tenant in Tail shall be good for 21. years after the making of the Lease, for the making may be at one hour of the day and is perfect by the delivery at that time, and therefore the Lease shall begin presently; And in this Case,

Case, it was agreed for Law, That if a man by Deed Indented, Bargaines and Sells his Lands unto another, and before the enrolling of the deed, he Bargains and Sells to another, and the last Deed is first Enrolled, and after the first Indenture is Enrolled within the 6. Moneths; the first Indenture is the best and shall be preferred before the latter, although it was first Enrolled.

124. By a Statute made 3. *M. Cap. 4.* Authority was given to Cardinal Poole, to dispose, order, imploy and convert the Benefices appropriate to the increase and augmentation of the Living of the Incumbent; He made a Lease for years of a Parsonage appropriate; It was holden the Lease was void; for he had authority but to the Intents specified in the Statute, and he had not the Fee simple given him by any words of the Statute. *Quere*, in whom the Free simple was; if in the Queen, or it was in Abeyance; not Resolved.

125. A Fine was Levied in the time of King John, by which the Conusor granted to the Conusee in Tail a Mannor, rendering to him a pair of gilt Spurs for all services *salvo forinseco servitio Domino Regi.* The Mannor was holden of the Lord Stafford. The Justices held it was but a Tenure in Socage, for the words *salvo forinseco servitio* were void to all purposes but to reserve such services by which he himself held of his Lord next paramount him, and not such services which any of the Lords paramount him held over by Knights service.

126. It was holden by the Justices, If a man find sureties for the Peace before Justices of the Peace in the County; yet if the same party come in *B. R.* and there make Oath, that he was afraid he shall be hurt by the said party, he may have surety of the Peace there against the party, and a Superseas to the justices to discharge the bond taken before them for the Peace and behaviour.

127. Note for a Rule by the Court, That in every case where the Defendant once confesseth a Deed, and after would avoid it by matter which makes the Deed defeasible, and not void: That in such Case he shall not plead *Non est factum* to it, but shew the special matter, and conclude Judgment of action; as if Debt be upon an Obligation against one who was within age; He shall not plead *Non est factum* to it, but shew the special matter, that he was within age.

128. A Lease was made to the Husband and Wife, and to a 3d. person, to have and hold to the Husband for 80 years if he should so long live, and if he dye within the Terme, the remainder of the said Term to the Wife and to the 3d. person if he should live so long.



It was Resolved a good *Habendum*, and that all the Interest was in the Husband, and nothing in the others till after his death; But it was holden, if a Lease be made to 3. of 3. acres, *Habendum* one acre to one for 20. years, of another to another for 40. years, and of the 3. to the 3d. person for 60. years, the limitation is void; for he cannot by the *Habendum* divide the estate in such manner which was joyned before.

*Gascon and Whatleys Case.*

129. A man seised of Lands in Fee, is bound in a Recognizance, and afterwards enfeoffes the Recognizee of parcel of the Lands; yet the Recognizor is chargeable for the Residue of the Lands to the Executor of the Recognizee, and for his body and goods, but if the Recognizor dye, his Heirs shall not be charged.

130. *Cessavit.* The Tenant said, That the demandant nor his Ancestors were never seised of the services within 40. years. It was holden by the Justices to be no plea, because this Writ is not within the Statute of 21 H. 8. cap. 2. of Limitation, and also because the seisin of the services is not materiall nor traversable in a *Cessavit*.

*Mich. 5. Eliz.*

131. Lessee for years Covenants for him and his assigns, that he will not lop nor top the Trees during the Terme, he dyes Intestate, his Administrators lops the Trees; he is chargeable to the Covenant, because he hath the Terme to the use of the Testator: The Words in the Lease were, Provided, It shall not be Lawfull to the Lessee to top the Trees; If these words are a Condition, or a Restraint only, no penalty ensuing upon it, *Quere.* It was not Resolved.

132. The Queen by Letters Patents *ex certa scientia & mero motu* granted to I. S. the Mannor of D. which she had by the Attainder of Sir Thomas Wyatt, and in truth she was seised of the Mannor by descent. Resolved, That the grant was void, because the Queen was deceived in her grant. *Quere,* if the same be not helped by the Statute of misrecitals, for when the substance of the thing granted appears certain, the Statute helps all other defects; but when the certainty of the thing granted doth not appear, then perhaps it is not helped by the Statute.

133. A Fine was Levied by Husband and Wife, and the Conusee rendered back the same Lands to the Husband and Wife and to the Heirs

Heirs of the Wife, and an Indenture was by which it was recited, that the Remainder should be to the use of the Husband and Wife and to the Heirs of the Husband. The Justices conceived, there is not any use implied upon a Fine, no more than upon a Feoffment; wherefore they conceived, that the limitation over was good enough. Dyer said, If the Remainder be in tayl, the Conusee is seised of the Reversion to his own use, *quod fuit concessum per les Justices.*

134. A man granted unto another *Herbagium & Pannagium* within his Lands rendring Rent; the Lessor cut down the Trees: Resolved, That Trespass would not lye by the Lessee against the Lessor; but he might have an Assize, because it is a Profit Appender in *loco certo capiendo.*

135. An Abbot was Parson imparsoned of the Church where the Abbot and Tythes were, the Abby was dissolved; The King granted the Monastery to one; and the Parsonage and Rectory to another; It was the opinion of the Justices, That if the Land of the Abby was the Glebe of the Parsonage before the Appropriation, that that Land was discharged of Tythes, for it remains Glebe notwithstanding the Appropriation; and the Glebe cannot be gained by Prescription, and the Glebe was never chargeable to pay Tythes; And if a Parson doth make a Lease of his Glebe, the Lessee shall not pay Tythes; But the Demeasnes of the Abby, not parcel of the Glebe, should be chargeable to pay Tythes, if they were not discharged in right by a Composition or unity perpetual.

136. A man made a Feoffment in Fee of Lands, upon Condition if he paid him 20 l. at the Feast of St. Mich. in St. Pauls Church, the Feoffment to be void; The Defendant in an Action brought pleaded he paid the Money at the day and place: upon which Issue was joyned, and gave in Evidence, That he paid it before that day at another place. Resolved, That the Evidence did not maintain the Issue; For although the Party may pay it at another day and place, if the other will accept of it, yet he is not bound to receive it; and in as much as the Partie is restrained to a day, and the day is made parcell of the Issue, he ought to prove payment at the day, or alledge the special matter, and plead payment before the day, and acceptance thereof, as the truth of the Case is.

137. If a man be indebted to I. S. 100 l. and the Debtee maketh an Acquittance to him in Writing that he hath received 20. l. of him in satisfaction of the 100 l. of all other Debts, Duties and Demands, the same is good, and amounts to a Release: but if it be without Writing, then payment of the 20 l. cannot be in satisfaction of the 100 l. by the Opinion of all the Justices.

138. A man deviseth his Lands to his Wife *de anno in annum* till his Son shall come to the age of 20. and dyes; the Wife enters, the Son dyeth before he attains 20. years. Resolved, the Interest of the Wife was determined: But if the Devise had been untill the Son should or might come to the age of 20. years, there, notwithstanding his death, the Estate of the Wife had continued.

139. If a Grand Cape issueth where there was no Original before, and Judgement be entred upon it. Resolv'd it is not void, but voidable only by Error.

140. Ravishment of Ward of two Daughters, the Plaintiff declared to his Damgages of 100 l. and upon *Nihil dicit* had Judgement; and upon a VVrit of Enquiry the Jury found the Ravishment of the Eldest, and that she was married to the Plaintiffs dammage of 80 l. and of the other two to the value of 60 l. & *pro raptu & abductione* 100 l. and the Judgement was entred for the damgages *pro raptu & abductione* conditionally, if she was married.

141. A man seized of an Advowson in Fee granted to another and his Heirs, that when the Church should become void, that the Grantee and his Heirs should nominate a Clarke to the Grantor and his Heirs, and he and his Heirs should present him to the Ordinary. Resolved, That if he who hath the Nomination present, he which ought to present shall have a *Quare Impedit* against him, & *contra*; But if an Annuity be brought against a Parson, the Aide is grantable onely of him who hath the Presentation; for that is in the right, and the right is in the Presenter.

142. Debt upon a Contract for 10 l. It is no Plea for the Defendant to say that the Contract was for a lesser sum, than the sum contained in the VVrit, because the Defendant might wage Law of it.

143. Copyhold lands are demised to two for Life successive, where the Custome is they may cut Trees; Resolved, It is a forfeiture of his Estate, and of the Estate of him in the Remainder.

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*Ter. Past. 5 Eliz.*

144. Lands at the Common-law, and Copyhold-lands are leased by one Indenture rendring rent. Resolved, that the whole Rent shall issue out of the Lands at the Common-law, and not out of the Copyhold. But if a man leaseth Lands, a part of which he hath by Disseisin rendring Rent, there the Rent shall issue out of the whole Land;

Land; and by the Entry of the Dissee, the Rent shall be apportioned.

145. A Composition was betwixt an Abbot and a Parson, that in recompence of the Tythes of all the Woods within the Mannor, whereof the Abbot was Owner, that he should have to him and his Successor 20. loads of Wood every year in 20. acres of the said Mannor to burn and spend in his House; The Parsonage was appropriate to the Abby, and after the Abby was dissolved; and the King granted the Parsonage to one, and the 20. Acres to another: It was resolved, That by the unity the Estovers were not extinct; for if they be Tythes they are not extinct by this unity of Possession, for that Tyths run with the Lands: and Tythes *de jure Divino & Canonica Institutione* do appertain to the Clergy.

*Eyes Case.*

146. In *Replevin*. The Case was, the Archbishop of York was seized of a Field in B. in the right of his Church, and Leases the same by Deed for years rendring rent; which was confirmed by the Dean and Chapter. In the Indenture there was a Proviso, that in the vacancy of the Bishoprick, the rent should be paid to the Chapter as in his right; the Bishop dyed: J. S. was created Bishop, and was deprived because he refused to take the Oath of Supremacy. I D. was chosen and created Bishop, and for Rent behind and not paid to the Chapter in the time of the vacancy he avowed. In this Case these points were resolved, 1. That the Proviso was well placed, and was a Condition being annexed to the Reservation of the Lease. 2ly. That the Successor might enter for the Condition broken in the time of his Predecessor. 3ly. The Bailiff of the Bishop could not enter for the Condition broken without a Special Warrant. 4ly. That the Condition was repugnant, because he appoints the Rent to be paid to the Chapter in the time of the vacancy, the Reservation being to the Bishop and his Successors. 5ly. That no Title was in the Successor to enter, because the Condition was repugnant. 6ly. That the Chapters are not of Capacity to take by Purchase or Gift without the Dean who is their Head.

147. A man made his Will in this manner: *Item*, I give my Mannor of D. to my second Son. *Item*, I give my Mannor of S. to my said Son and to his Heirs. It was resolved by the Justices, that in the first he had but an Estate for life, and the *Item* seems to be a new Gift to a greater Preferment in the second place for the amendment of the other.

148. A man seized in Fee took a Wife, and afterwards levied a Fine of his Lands with Proclamation, and 5. years passed in his life, he dyed, and after other 5. years passed. Resolved, That the Wife should

should be barred of her Dower, because she did not claim it within the 5. years after the Title of Dower accrued.

149. Affise against divers, who pleaded *Nu'tort*, &c. the Affise found, that all the Defendants were Disseisors, but that one of them did the Disseisin with force. It was the opinion of the Justices, That the Verdict was good, for that the Force and Disseisin was two things; for Force is not incident to every Disseisin, for it should be enquired by the Affise if they or any of them had done the Disseisin with force; and if Lessee for years be re-ousted with force, and he in the Reversion bring an Affise, and the Disseisin is found with force, yet the Force is not punishable, for the Force was to the Lessee for years.

150. *Nota*. It was resolved by the Justices, That if the Demandant do recover in an Affise, he may enter and execute the Judgment without being put in seisin by the view of the Recognitors of the Affise: but if he be disseised again, he shall not have Re-disseisin, but is put to his Writ of *Post disseisin*.

151. *Note*, It was agreed by the Justices, That if Tenant in tayl discontinue and dyeth, and an Ancestor Collateral in the life of the Tenant in tayl releaseth to the Discontinuee with warranty, and dyeth; and afterwards the Issue in tayl brings a *Formedon*, and is barred by the Collateral warranty (if after, that which was a Collateral warranty become a lineal warranty, as it may;) yet he and his Heirs shall never have remedy against that Bar; But if an Exchange be between Tenant in tayl and another, and the Tenant in tayl dyeth, and the Issue enter into the Lands taken in Exchange, and afterwards brings a *Formedon*, and is barred and dyeth; yet his Issue may enter into the Lands exchanged, or recover the same by Action, notwithstanding the bar in the first Action, for that is but a warranty in Law, which is not so strong as a warranty in fact: but he may disagree to the Exchange and enter, or bring his Action at his Election.

152. A man leaseth a Mannor to another with all the members and appurtenances, To have and to hold all the members of the said Mannor to the Lessee for years. It was holden, It was a good Lease of the Mannor for years; for the limitation of the word *Memor* was void, and so it was a good Lease of the Premises without the *Habendum*.

*Sutton and Robertsons Case.*

153. In Ravishment of Ward, the Case was, Lord and Tenant: The Tenant enfeoffeth the Lord and another of the Tenancy; and they reenfesseth the Tenant. It was resolved by all the Justices, That the Seignory was extinct; for by the Feoffment to them all  
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the Seignory was suspended in their hands, and then when they departed with the Lands discharged of the Seignory, it was an Extinguishment of the Seignory: and when the Lord joyned with his Companion in the Feoffment, all passed by the Feoffment of any of them, and if the Lord releaseth all his Right in one Acre of the Lands holden, it is an Extinguishment of the whole Seignory.

154. A man by his Will deviseth his Lands to his Wife to imploy and dispose them upon herself and his Sons at her will and pleasure. Resolved, It was a good devise in fee to her, but the Estate in her was conditional by reason of the words *et in omnibus*, which makes a Condition in a Devise, but not in a Feoffment, Gift or Grant.

155. A man recovered and sued forth a *Capias ad satisfaciendum* to the Sheriff, who arrested the Defendant, and he after escaped, and at the day the Sheriff did not return his Writ: A *Sicut alias* issued to the Sheriff; upon which the Sheriff arrested him again, and the Defendant brought an *Andita Querela*. Resolved, the Writ did well lye; for although the Party himself might have a false Imprisonment against the Sheriff, because he had not returned his Writ, and so was a Trespasser *ab initio*, yet by the first taking in Execution the Arrest cannot be lost by the not returning of the Writ, but having respect to the Party Plaintiff he is in Execution by the first taking presently: And in this Case it was said, That if a man be condemned in Debt or Trespass and be taken in Execution, although he be chosen a Burgesse of Parliament, he cannot have the Priviledge of Parliament to discharge him of the Execution.

Term. Pasch. 6 Eliz.

*Broughton and Conways Case.*

156. Debt upon Obligation. The Condition was, whereas the Defendant had sold to the Plaintiff a Lease of the Mannor of S. that he should not do nor had done any act to disturb the Plaintiff of the possession of it, but that the Plaintiff should hold & enjoy it peaceably, without the disturbance of the Defendant or any other, and assigns a Breach, That A. had brought a Writ of Dower against one B. of the said Mannor, and had Judgment and Execution, and so he was disturbed. The Defendant said, That the Recovery in the Dower was before the sale made to the Plaintiff. Resolved, The Plaintiff should be barred,

barred, because the Defendant is not bound by the words of the Condition to warrant the peaceable possession to the Vendee, but only for acts by himself done or to be done, and here no act was done by him.

157. It was holden by the Justices, That in an Action brought upon the Statute *De Malefactoribus in parvis*, That notwithstanding that the Queen pardons the offence, yet by the Statutee the Party hath remedy for the Trespas done to him.

158. A man made a Feoffment in Fee upon Condition, that if the Feoffor paid certain Monyes to the Feoffee before such a day, or to his Executors or Assignes, then he might enter before the Day the Feoffee made the Feoffor his Executor, and by his Will gave all his Goods and Chattels to his Wife and dyed. *Brown* Justice, held, That by making the Feoffor Executour, the Debt was released, because the Executor could not pay the Debt to himself: But the better opinion was, that the Feoffee was to pay the Money, being a thing Testamentary to the Wife, as an Assignee of the Feoffee: *Quare*, the Case was not resolved to whom the payment should be.

159. Dower brought; the Defendant pleaded that he had assigned to the Wife 20. acres of Corn out of the Land in recompence of her Dower; and adjudged a good barr, as well as of Rent, or any other profit out of the Land.

160. Three Coparceners, Daughters, the one of them and her Husband enter into the whole (the other being supposed out of the Realm) in the right of his Wife; and afterwards the other two return, and release to the Husband and Wife and their Heirs: It was holden, that the Release should enure only to the Wife and her Heirs, because the same enures only by way of Extinguishment, and the Baron is seised in the right of his Wife: But admit the Husband and Wife both enter and are Disseisors, then the Release shall enure to them both: and then when the Wife survives the Husband she shall have the whole.

161. It was held by the Justices upon the Statute of 3 H. 8. of Monasteries, That if a Woman who hath a Widdows estate of Lands holden by Copy whereof the Inheritance was in the Abby, That if the Abbot will make a Lease of the same in reversion, it is no good Lease by that Statute; but otherwise it is of a Lease at will by the Common-law.

162. Note by the Justices, If Issue be joyned, if a Church be void by a Cession, Deprivation, or Resignation, it shall be tryed by the Country, because it is a thing mixt; for the Avoydance is Temporal, and the Deprivation is Spiritual: But *habilitie Bastardy*, *ne unque accouple en loyal Matrimoine* shall be tryed by the Certificate of

of the Bishop; but Bastardy pleaded in a Stranger to the VVrit shall be tryed by the Country.

163. VVords spoken of an Attorney of the Common Pleas, *viz* He is the falsest Knave in England, and by Gods blood, he will cut thy Throat; Adjudged Actionable.

164. A man devised his Land to his wife for life, the Remainder to another for his life, and after their deaths he devised that the same Lands should be sold by his Executors or the Executors of his Executors; he dyed after the Wife, and he in the Reversion dyed and during their lives, one of the Executors dyed intestate. It was the opinion of the Justices, That the Executors of one Executor should not make the sale, for they had authority joyntly, and if one of them fail, the other cannot execute the Testament; and so it was said it was adjudged in *Franklyn's Case*, where a man devised that *I. S.* and *I. D.* by advice of the Parson of *D.* should make sale of his Lands after his death, and before the sale, the Parson dyed, the other two could not sell the Lands.

165. Wast assigned in a Marsh for that the Lessee suffered a Sea wall adjoyning to the Marsh to be ruinous, by which by the flowing of the Sea the Marsh was drowned. The Court conceived, That if it was a small breach in the Wall, and the Lessee did not repair it, but suffered it to continue, it was waste; but if it was suddenly done by the violence of the water, the Defendant might plead that matter in barr.

Sir Edward Bray and Andrews Case.

166. Action for words, *viz* My Master was not content to take my Living from me, but sent his Man Andrews to kill me. Resolved, the Declaration was not good for the incertainty; for the words, My Master comprehends a generality, and doth not refer to any Person certain; and therefore it cannot be intended the Defendant intended to tax the Plaintiff more then any other Person, and it may be he had at that time many Masters, and it ought to appear to the Court of what Person certain the Defendant intended the words.

167. An Action upon the Statute of Apparel, The Writ was *Ad respondendum Domine Regine, quam I. S.* Resolved the Action was not well brought, because the Queen and the Party cannot joyne in the Action, but they ought to have several Actions, *viz* the Queen shall have an Action for her part, and the Informer for the other part; For although by the Premises of the Statute it is an entire duty, yet the sequel of the Statute determines how the penalty shall be taken, and it is as several forfeitures.

The



*169. The Earl of Northumberland's Case.*

168. Resolved one cannot have a Writ of Forfeiture of Marriage without a Tender made to the Heir: *contra* of a Writ *De Valore Maritagii*.

169. Upon an Exigent a Writ of Proclamation issued which was returned served, but the Name of the Sheriff was not to the Writ. *Quere*, if it be Error. The Court would advise of it.

*Felton and Capells Case.*

170. In a Formedon in the Descender, the Tenant vouched to Warranty *I. S.* who entered into the Warranty; and vouched *I. D.* It was the opinion of the Justices, That is a good Counter plea, that the vouchee nor any of his Ancestors had any thing after the gift, so as he could enfeof him who vouched him.

171. In Debt upon an Indenture; the Defendant pleaded that it was rased after the delivery by the Plaintiff: But he cannot plead, That it is not his deed, and give in Evidence the rasure, but he ought to plead the special matter.

172. A Bishop made a Lease for years, which was confirmed by the Dean and Chapter, and after he let the same Land to another for 20. years, and afterwards before any Confirmation of it, he let the same Lands to a third person for 60. years, and the last Lease was first Confirmed, and after the Lease in Reversion was Confirmed also. Resolved, that that Lease was good, and the Confirmation good, notwithstanding the last Lease was first Confirmed; for the Lease is not to have any Interest by the Confirmation, but only to make it perdurable and effectual.

*Squier and Reads Case.*

173. It was holden by the the Justices in this Case, That it is a good Challenge in a Writ of Right to the 4. Knights, that they are not *gladiis cincti*: And a Challenge to them must be made upon their appearance; for after they are once sworn they are not Challengeable: Also the 4. Knights are to make the Pannell, and they need not to put their Names to it at the Return of it, as the Sheriff useth to do; and they ought to return to be of the Grand Assise but 12. persons besides themselves.

174. A man had Judgment to recover in trespassse and had Execution of the Reversion of a Lease for years and of the Rent. It was the opinion of the Justices, that the Rent and Reversion was presently in him, and that he might avow for the Rent without alleging any attornment of the Lessee for years.

175. Debt upon Obligation, conditioned to pay mony to the Oblige and the Parishoners of *D.* at such a Feast: payment to the Obligee and two of the Parishoners of the Parish is good; and

and it is not requisite the payment be made to all the Parish-  
oners.

176. In an Assise of *Novel disseisin* the Assise passed against the Plaintiff, who thereupon brought an Attaint, and alledged that the Jurors to the Attaint, had not the view of the Tenements in demand. It was the opinion of the Court, that after the Verdict given, it cannot be alledged, that the Jurours had not the View; and Judgment was given without the View.

177. In Dower, the Defendant pleaded, That the Husband of the demandant did not dye seised; so that she could not have damages, and because there were Woods upon the Lands, she prayed a Writ of Estrepmnt. *Quare*, if it doth Lie, It was not Resolved.

*Griffiths Case.*

178. Lessee for years suffered the Banks of the River of Trent, which ran by the Lands let, to be unrepaired; so as the Water brake the Banks and drowned the Lands: Adjudged, That River was not so violent, but that the Lessee by his Industry might repair the Banks, and to make the water run in its Current, and therefore adjudged, it was Wast.

179. Debt was against Executors upon an Obligation which was, that if the Testator or his Executors at Mich. every year during the life of the Obligee delivered to the Obligee a Load of Dung, that then, the Defendants pleaded, that they and their Testator had performed, not shewing how, which was found against them; It was adjudged, that for this false plea of the Executors, Judgment should be against them, *de bonis propriis*.

180. One was named in the Original in Debt, *A. B. of C.* in the County of *Denbigh*, He appeared upon the *Cepi Corpus*, and said that he was dwelling at *D.* at the time of the Action brought; It was holden, it was No plea, that he was not dwelling at *C.* at the time of the Action brought, unlesse he say *Ne unque pui*.

181. Lands in *London*, which by the Custom were deviseable, came to the King by Escheat, who granted them over to *I. S.* to hold by Knights service. It was holden, That notwithstanding the Statute, the devise of the whole Land was good as it was by the Custome, which is not taken away by the Statute.

182. The King by his Letters Patents gave authority to his Surveyour to make Leases of certain Lands for life, reserving the ancient Rent: He by Indenture between the King of the one part, and *I. S.* of the other part: *Quod Dominus Rex dimisit, &c.* and the Surveyour put his own Seal to the Deed, It was adjudged a void Lease;

Lease; for he ought not to have put his Seal to it, but the Seal of the King: and it cannot be the Lease of the King without his Seal.

183. Grandfather, Father and Sonne, The Grandfather is Tenant for life, the Remainder to the Son in tail, the Remainder to the right Heirs of the Grandfather: The Grandfather suffers a Recovery and levies a Fine with Proclamation to I. S. and after the Statute of 27 H. 8. is made, and the Grandfather enfeoffeth the Sonne of the Land and dyeth. Resolved, that the entry of the Father upon the Son was lawful, and he shall not be estopped by the warranty of the Grandfather; for that the Warranty was gone by the reprisal of the estate, and it was holden, That although the 5. years were past in the life of the Grandfather, yet when the Grandfather dyes, the Father shall have other 5. years to make his Entry, or clayme, and that by the Statute of 4 H. 7.

184. Lessee for years rendering Rent upon Condition if the Rent be behind, the Lessor to Reenter, a Recovery in Debt is had against the Lessor, and the Reversion and Rent extended by Elegit and given in Execution, It is a good Execution and the Condition suspended, so as if the Rent be behinde, the Lessor cannot enter into the other moiety.

185. Two Tenants in Common of a Wood; one Leaseth his part for years who cuts Trees and commits Wast, he shall be punished for the moiety of the Wast, and the Lessor Recover the moiety of the Land Wasted.

186. The Dean and Canons of *Windsor* were Incorporated by Act of Parliament, by the Name of the Dean and Canons of the Kings Free Chapel of his Castle of *Windsor*, and they made a Lease by the Name of the Dean and Canons of the Kings Majesties Free Chapel of of the Castle of *Windsor* in the County of *Berks*. Resolved, the Lease was good; for although the King in the Act of Parliament call it his Castle, yet when another speaks of it, it is more apt to call it the Castle, and therefore such variance shall not avoid the Lease.

#### *Newdigates Case.*

187. Lessee for life and he in the Reversion joyned in a Lease for years, Lessee for life dyed, the Lessee committed Wast. Resolved, that during the life of the Lessee for life, it was her Lease and the Confirmation of him in the Reversion: But when the Tenant for life dyed, then it was the Lease of him in the Reversion, and that he should have an Action of Wast *ex divisione propria*.

188. A man hath 3. daughters and Covenants with I. S. that he shall have the disposition in marriage of one of them; the Election is in the

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the Father, of which of the daughters the other shall have the Marriage; and he is not to deliver the daughter till request; but upon request he is to deliver the daughter to T. S. otherwise he cannot have the effect of the Covenant.

189. In a Writ of False Judgment, the Sheriff returned *Quod acceptis secum 4. legalibus Militibus de Com. suo accessit, &c. Et recordum illud habeo, &c. coram, &c. sub sigillo meo & sigillis predicti Militum*; It was adjudged to be no good return; nor the Record removed, but it ought to be *sub sigillis ex his qui Recordum illo interfuerant*, and not of the 4. Knights.

190. It was holden by the Justices, that if upon the Exigent the Defendant hath a Superedeas, but doth not deliver the same before the 5th County, so as he is returned Outlawed, yet because the Superedeas was upon Record, the Justices held the Outlawry to be void.

191. A Writ of Wast was *Quod fecit vastationem* in the Land, and assigned the Wast in cutting down of Trees; It was holden that was not good, but if he had assigned the Wast in digging of Clay or such other things, it had been otherwise, for that is Wast in the Land.

192. A man devised his Lands to his eldest Son in Tail, the remainder to his youngest Son in Tail, the remainder to his Daughter in Tail, and if they all dyed without Issue, that then the Land should be sold by his Executors; the eldest entred and dyed without Issue, the younger Son entred and suffered a Common Recovery, and after dyed without Issue, and the daughter also dyed without Issue. Resolved, That the Executors could not now sell the Land.

193. Note, If an Infant levy a Fine, and take back an Estate for life or in Tail by render, he shall not avoid after the Fine by Error, but is without remedy.

*Hawtree and Angers Case.*

194. Debt against A. B. and E. the daughter of C. Coheirs in Gavelkind upon an Obligation of their Father A. and B. were Outlawed and had their pardon, E. the daughter of C. who was dead, was waive; The Plaintiff declared against A. and B. *simul cum E.* who was waive; The Defendants pleaded that E. now one of the Heirs in Gavelkind was within age; It was Resolved, that the Heir of an Heir should be chargeable with an Obligation *simul cum* the immediate Heirs, and that such Heir should have his age, and if he was within age, the *parol* should demur for them all,

*Mich. 7. Eliz.*

*Swann and Searles Case.*

195. Covenant against *A.* and *B.* Executors of *I. D.* *I. D.* was Tenant for life, the remainder to *A.* *I. D.* by Indenture demised the Land to the Plaintiff for years, rendering rent by the word *dimisit & concessit*, *I. D.* dyed, *A.* who was in the remainder entred and avoided the Terme; and thereupon the Plaintiff the Lessee for years brought the Action against the Executors of *I. D.* and it was adjudged that the Action did not lye.

*Mich. 7. Eliz.*

*Worleyes Case:*

196. An Infant was bound in a Statute of 600 *l.* and afterwards was taken in Execution upon it, and at full age he brought an *Audita Querela*, to avoid the Execution: The Case was argued by the Judges, and at length Resolved, That the *Audita Querela* should abate; For it was Resolved, that if any Infant acknowledge a Statute, or Recognizance, or Levyeth a Fine of his Land, he shall not reverse it by Error or otherways, when he is of full age, it being matter of Record; but if he will avoid it, it must be during his Minority.

197. One came to an Inn and brought goods with him, The Inkeeper said to him, There are many resort to this House, and I do not know their behaviour, therefore here take the Key of such a Chamber and put your goods there, for I will not take Charge of them, and afterwards the goods were stolen. It was the opinion of *Wray* Justice, that an Action did lye against the Inkeeper, for he is by the Law chargeable with all things which come into his Inn, and by Law he cannot discharge himself by such words as are in this Case.

*Price and Jones Case.*

198. Error by *A.* and *B.* against *I. S.* of a Judgment in an Assise of *Novel Disseisin* given by the Justices of Assise at *Moumouth*; It was demurred unto, and Adjudged here in *C. B.* That a Writ of Error here upon that Judgement did not lye.

*Stakely and Thynns Case.*

199. In Debt the Plaintiff and Defendant both appeared by their Attor-

Attorneys and day was given to the parties *in statu quo tunc*, till 8. Hyl. at which time the Defendant made default; Holden the Plaintiff should not have Judgment, because *Dies Datus*, is as strong as an Imparlance.

*Lucas and Cottons Case.*

200. Words, viz. *George Lucas* is a false Knave and worthy to stand upon the Pillory. The Defendant Justified, because the Plaintiff swore his debt falsely to be true, upon an Attachment according to the Custome of the City of *London*; which by the Court was holden to be a good justification, wherefore adjudged against the Plaintiff.

*Shiffeld and Sibills Case.*

201. Debt by Husband and Wife upon a Lease for years; the Defendants said, that they had not any thing in the Land at the time of the Lease, as to part; It was found that they had and did demyse, and as to other parts that they did not demyse; It was holden, the Plaintiffs could not have Judgement for any party.

*Arden and Mischells Case.*

202. *Replevin*. The Defendant avowed as Bayliff to the Countesse of *Rutland* for Rent; The Defendant said, that the Abbot of *C.* 29 H. 8. was seised and made a Lease to *I. S.* for 60. years rendering Rent, viz. 22 s. and expressed the same by such figures, viz. 22 s. and that after the making and delivery of the Indenture, the Plaintiff caused the said 22 s. to be rased into the forme of 5. and after the said 5. caused to be adjoynd the Letter (m) by which the Indenture was void. It was the opinion of the Justices that by such rasure the deed was void.

*Belfield and Rouse Case.*

203. Dower. The Defendant pleads as to part in abatement, that he was not Tenant, and as to the Rest, he pleads a gift in Fee to the Husband by which he claimed the Land as Brother to the Husband; and also pleads a Will by which he was entitled to other parts, both which the Plaintiff did Derain; Upon *Non Detinet*, it was found for the Plaintiff, and she had Judgment for damages from the death of the Husband.

*Watson and Bishop of Cant. Case.*

104. In a *Quare Impedit*, the Defendants at the Distresse made default, and Judgment was given for the Plaintiff against all the Defendants to recover damages, because they were supposed all disturbers by their default; but the Plaintiff was compelled to make Title,

*Bullock and Bardetts Case.*

205. The Case was, the Bishop of *Salesbury* in *temps R. 2.* made a Feoffment in Fee of a Messuage and 3. Roodies of Land in *Erborfield*, parcel of the Mannor of *S. nec non* of 17. Acres of Wood in a great Wood containing a 1000. Acres to *Bullock* and his Heirs, and after 5. descents the Land came to the Plaintiff, who 6. of the Queen entred into the great Wood, and made election of the 17. Acres in a place called *Saltors Hill* parcel of the said great Wood, and distinguished them by Metes and Bounds; The Question was, if the 17. Acres passed to *G. Bullock*, and whether the election of them by *R. Bullock* his Heirs in the 5th. descent was good or not; It was the opinion of the Justices, that nothing thereof was vested in *G. Bullock* the Ancestor and the Election to have the 17. Acres was not given to the Plaintiff the Heir, for that nothing was in the Ancestors which might descend to him, and as a purchaser he could not take for that nothing was given to him.

*Pass. 10 Elix.**The Lord Dacres Case.*

206. The Lord *Dacres* and others agreed to enter into a Park and hunt there, and to kill those who should resist them: They entred, and *I. S.* came to one of them, and asked one of them what he had to do there, and the other killed him, the Lord being a quater of a myle distant from the place, and knew nothing of it. It was adjudged Murder in him and all his Companions.

*Sir Rich. Mansfields Case.*

207. Difference being betwixt *Sir Rich.* and one *Herbert* for Wreck of the Sea, they appointed a Duell; *Herbert* with his Servants came to *Sir Richards* house to fight with him; a Friend to them both, perswaded with them to take up the matter; One of the Servants of *Sir Richard* cast a Stone at *Herbert* and his Servants, and perchance therewith killed their Friend: It was adjudged Murder for the Malice which he had to *Herbert*.

208. A man made a Lease for years upon Condition if the Rent was behind the Lease to be void; the Rent is behind, the Lessor continued possession for 3. years after, the Lessor brought debt for the Rent for all the time, *Quere*, if it doth lye; the Justices were divided in opinion.

Moreton and Hopkins Case.

209. In a second Deliverance by *A.* against *H.* the Defendant, he made Conuſance, as Bayliſſ to *I. S.* and *M.* his Wife: The Caſe was, the Plaintiff 17 *Octob.* 4. & 5. *Mar.* by deed granted a Rent of 10*l.* to *B.* and to *E.* and *W.* the younger Son of the ſaid *A.* *Habend.* for the life of *E.* to the uſe of *E.* and gave ſeiſin of it; *W.* and *E.* ſo ſeiſed; *W.* dyed, *E.* took Husband *I. S.* who for 5*l.* Rent arrears avowed. The Plaintiff ſaid, That the ſaid *I. S.* 2 *October* 7. *Eliz.* acknowledged that he had received 5*l.* of the Plaintiff of the ſaid Rent; It was adjudged, that the ſaid receipt and acquittance of *I. S.* the Husband was a good barre of the Conuſans.

Howſe and the Biſhop of Elys Caſe.

210. In Debt the Plaintiff declared, that the predeceſſor of the Biſhop granted to him the Office of keeping the Manſion Houſe of *D.* of the Biſhop, for the Term of his life; with the Fee of 2*d.* per diem to be iſſuing and paid out of the profits of the ſaid Rents and Farme of *D.* by the Receiver of the Biſhop; and alſo an yearly Robe, which grant was confirmed by the Dean and Chapter; the Biſhop dyed, the Annuity and Robe was not paid, for which the Plaintiff brought his Action againſt the Succeſſor Biſhop, who pleaded that the Plaintiff did not exerciſe the ſaid Office, and becauſe *D.* was within the Iſle of *Ely*, where the Kings Writ did not run; a *Venire* was to the Sheriff of *Cambridge* from *S.* next adjoining to *D.* in the ſaid Iſle of *Ely*; who found for the Plaintiff, and he had Judgment to recover the Annuity, and the Arerages, and the Robe, and that the grant did binde the Succeſſor.

Luken and Eves Caſe.

211. In Replevin, The Defendant avowed for that *A.* was ſeiſed of the Mannor of *D.* in Fee, and had a Leet within the Mannor to be holden in the Feaſt of *St. Michael*. and let the Mannor to the Defendant for years; And that the Defendant held the Court Leet ſuch a Feaſt; and that the Plaintiff was an Inhabitant within the Leet at the time, and being Summoned to appear at the ſaid Leet, did not appear, which being preſented by the Homage, he was Amerced 5*s.* which was aſſeſſed, and for the Amercement the Defendant did deſtrain: The Defendant pleaded that he was not a Reſident within the Leet at the time which was found againſt him; wherefore the Defendant was adjudged to have a Return of the *Cat.* and his damages.

Stephens and Clarks Caſe.

212. *Quare Imp.* King Henry 8. ſeiſed of the Mannor of *D.* and the Advouſon Appendent, preſented *I. S.* the Mannor with the



Advouſon by Diſcent came to the Queen, who granted it to the Lord *Stafford* and his Wife and the Heirs of the body of the Lord; the Lord *Stafford* dyed; His Wife and eldeſt Son granted the Mannor and Advouſon to *I. D.* and his Wife for their lives: The Incumbent dyed, who during the Avoidance, granted the Advouſon to the Plaintiff. It was Reſolved, That the grant of the next Avoidance to the Plaintiff during the Avoidance, was void in *La.v.*

*Playn and Crouches Caſe.*

213. A Villein was Regardant to a Mannor, the Lord of the Mannor had not ſeiſin of the Villein, nor any of his Anceſtors from *1. H. 7.* to this time; but they had ſeiſin of the Mannor to which the Villein was Regardant, and if ſeiſin of the Mannor was ſeiſin of the Villein, was the Queſtion; The Iſſue in an Aſſiſe being upon the ſeiſin, *Quare*; It was not Reſolved, it was Conceived that in *favore Libertatis*, the Lord could not now ſeiſe the Villein, No Judgment was in the Caſe.

214. If the Husband be ſeiſed of Land in the Right of his Wife, the Husband makes a gift in Tail of it rendering Rent, and afterward the Husband and Wife grant the Reverſion by Fine: It was holden it ſhould bar the Wife of the whole: but if they had granted the Rent only, then the Wife after the death of the Husband might enter into the Land.

215. A man Leaſeth a Mannor for years, rendering Rent with a Reentry; a ſtranger recovers in Debt againſt the Leſſor, and hath *Eligit* upon the Judgment. Reſolved he ſhall have the moyety of the Reverſion, and the moyety of the Rent in Execution; and the Condition is ſuſpended for the whole yide before.

216. Tenant in Tail makes a Leaſe for 21 years, and afterwards makes a Feoffment in Fee, with a Letter of Attorney to make Livery, who enters and ouſts the Leſſee and make Livery: Adjudged, It was a diſcontinuance; And it was ſaid, That it was adjudged in the Earl of *Warwick's* Caſe. A man made a Leaſe for life, and afterwards made a Feoffment in Fee, and a Letter of Attorney to make Livery, who ouſts the Leſſee and made Livery. That it was a good Feoffment, and if the Leſſee for life reentered, the Reverſion remainder in the Feoffee.

217. A maid Servant conſpires with her Lover to rob her Miſtreſſe, the Man comes in the night, the Maid hides him; and after the Man kills the Miſtreſſe: Adjudged Murder in the Man, and Petty Treason in the Maid Servant.

*Symonds Case.*

218. *A. 24. H. 8.* Covenants with *I. S.* that all persons who were Feoffees of Certain of his Land should be seised thereof to the use of the said *A.* for life, and after his decease to the use of *W.* his Son, and *M. S.* and the Heirs of their bodies begotten, and for want of such Issue the remainder to the Right Heir of *A.* and after he makes a Feoffment to those uses, *W.* and *M. S.* intermarry, *A.* dyeth. After 27. *H. 8.* the Husband aliens the whole and dyeth; his Wife enters into the whole; Adjudged her entry into the whole was not Lawfull; but only for a moyety, and it was agreed that several moieties may be of an Estate tail, as well as of a Fee simple between Husband and Wife.

219. A man made a Feoffment to the use of a Woman for life, who was a *Feme sole* at the time, the remainder to the right Heirs of their two bodies, the remainder to his right Heirs in Fee; after they intermarried, and the Husband having Tenants at Will of the Lands, Devised that the Wife should have the Reversion in Fee, so as she pay his debts and Legacies and performe his Will, and by his Will deviseth his Tenant should have the Tenements for life and dyeth, the Wife takes another Husband, who ousts the Tenants at Will: It was Resolved, the same was no forfeiture of her remainder. But if the Will had been upon condition that his last Will should be performed, It had been otherwise.

220. A man made a Lease for 30. years. The Lessor Covenanted to Repair the House. The Lessee granted parcel of the Term for 10. years: It was holden, that his Grantee should not have an Action of Covenant by the Statute of 32. *H. 8.* of Conditions, for he is not Tenant to the first Lessor; But if the Lessor granteth his Reversion for years, his Grantee shall have Covenant or benefit of the Condition with which the Lessee is charged; for he is an Assignee within the Statute, because the Lessee holdeth of him.

221. If the Ancestor of the Husband Covenant to stand seised of Certain Lands, to the use of the Husband and Wife in Consideration of Marriage, and also for a Certain Sum of Money, If the Wife alien that Land after the death of the Husband: It was said, that the Heir of the Husband might enter by the Statute of 11. *H. 7.* for the Consideration of Marriage shall be preferred before the Consideration of Money, and then it shall be said the gift of the Ancestors of the Husband, and within the Statute, as it was said it was adjudged in *Villiers Case.*

*The Lord Treasurer and Barons Case.*

222. A man made a Lease for 100 years: The Lessee made a Lease for 20. years rendering Rent with clause of Reentry; the first Lessor

Lessor granted the Reversion in Fee, attornment was had, the grantee purchased the Reversion of the Term: It was holden and adjudged, that he should not have the Rent nor the reentry, for that the Rent which was incident to the Reversion, was extinct by the purchase of the Reversion in Fee.

223. A man was Tenant by the Curtesie of a Manner, a Copyhold came to his hands by forfeiture; Afterwards he was bound in a Statute, and afterwards demised the Copyhold Land again: It was holden this Copyhold should be lyable to the Statute, because it was once annexed to the Freehold of the Lord, and bound in his hands.

*Pasch. 12. Eliz.*

224. If the Lord grant to his Copyholder the Trees growing upon the Land and which afterwards shall grow, and that it shall be Lawfull for the Tenant to cut and carry them away: It was holden to be No forfeiture of his Copyhold, because he hath dispensed with the forfeiture by his grant, but he cannot cut the Trees which shall after grow, for as to them the grant is void.

*Brabrokes Case.*

225. *I. D.* 19. *H. 8.* gave the Mannor of *N.* to *I. S.* and *A.* and the Heirs of the body of the said *I. S.* on the body of *A.* remainder to a stranger in Tail, the remainder in Fee. *I. S.* Married *A.* and after 26. *H. 8.* he suffered a Common Recovery with single voucher to the use of him and his Heirs, the Statute of 27. *H. 8.* was made, and after he in the remainder in Tail was attainted of Treason, and 28. *H. 8.* It was Enacted in Parliament, that all his Lands and hereditaments which he had or ought to have, should be forfeited, the Recovery was without any Original: Afterwards *I. S.* gave the Mannor to *I. D.* and his Heirs, who made a Joynture thereof to *M.* his Wife for life, after the death of *I. D.* *M.* took to Husband the Plaintiff, against whom Intrusion was brought; It was adjudged against the Plaintiff for one moyety.

Hil. 14. Eliz.

226. The Earl of *Oxon*, Tenant for life of certain Mannors made a Copy in reversion to *I. S.* for life and dyed; the Copyholder in possession dyed. The Heir of the *Earl* demised the same by Copy to *I. S.* It was the opinion of all the Justices, that the Copy in Reversion was not good: But it was agreed, If it come in possession during the Tenant for life, then it is good.

227. Two Acres descend to two Coparceners, one of them before Partition grants a Rent Charge out of one of the Acres, and upon Partition, the Acre charged is allotted to the other Sister. It was adjudged, she should hold it discharged of the Rent.

*Pledall and Pledalls Case.*

228. It was Adjudged in this Case, That the Jurours are not to take Notice of matters of Estoppel which are given in Evidence between the parties, upon pain of Attaint, for they are strangers to the Conclusions of the parties,

*Evans Case.*

229. A man had issue two Sons, and devised Lands to his youngest Son in Tail and dyed, the eldest having Issue a Son; the younger Son aliened the Land in Fee with Warranty, and went beyond Sea, and there dyed without Issue, the Son of the eldest being within age; It was the opinion of the Justices, the same was a Collateral Warranty, and without assets, was a bar to the Issue of the eldest Son notwithstanding his Nonage.

*Muttons Case.*

330. A man seised of Land, levied a Fine to the use of himself and such Woman as he should after Marry, and after their decease to the use of *I.* his daughter and the Heirs of her body, afterwards he Married *A.* and dyed, who entered; It was the opinion of the Justices, to *A.* for her life.

*Appovel and Monnoux Case.*

231. *A.* seised of the Mannors and Rectories of *B. G.* and *D.* let the same (except the scite of the Mannor of *B.*) to *I. S.* for 25. years; Reserving for the Mannor of *B.* 76 *l.* for the Mannor and Reversion of *B.* 30 *l.* for the Rectory of *B.* 14 *l.* and for the Rectory of *D.* and the Lands to it belonging 23 *l.* payable yearly at 2. Feasts in the Church of *F.* not parcel of the Premises upon Condition if the said Rents or any of them were behind for the space of 7. Weeks, it should be Lawfull for him his Heirs and Assignes to

to Reenter on all the premises; and afterwards he bargained and sold the Scite of the Mannor of B. and the Reversion of all the Mannors and Rectories to I. D. and his Heirs; who enfeofed certain persons, and granted the Reversion of all the Mannors and Rectory, to have and hold the Scite of the Mannor of B. and the Reversion of the Rectory of D. to the use of himself and *Eliz* his Wife for their lives and the life of the Survivour of them, the remainder to W. his Son and his Heirs for ever: And to have the Reversion of all the other Mannors and the Rectories of B. and C. to the use of himself for life, the Remainder to the said W. his Son and his Heirs: I. S. the Lessee attorned, I. D. dyed *Eliz* his Wife held the Scite of B. and the Reversion of the Rectory of D. by Survivour; W. seised of all the Mannors and Rectories as aforesaid, granted the Reversion of a Messuage parcell of the Mannor of B. to W. D. and his Heirs, to which grant I. S. attorned, and afterwards by Bargain and sale enrolled; granted the Reversion of all the said Mannors and Rectories to H. I. and K. and their Heirs, half a years Rent reserved for the Mannor of B. was behind; for which the grantees distrained by their Bayliffs: In this Case, it was Resolved. 1. That this demise and Lease was joynt and entire, and so was the Condition of it, notwithstanding the several Reservations of the Rents. 2. That the grantee of parcell of the Reversion, could not take advantage of the Condition, but that the Condition as to the grantee was determined. 3. That the bargainee was a sufficient Assignee within the Statute to take advantage of the Condition, by the Statute of 27. H. 8. of uses, which gives *Cestuy que use* the possession, and the Estate of the Feoffees, and all the advantages which the Feoffees might have; and they agreed the Condition to be determined upon this difference, *viz*. When it is entire one cannot divide it by his own act, but by act of Law in may be divided and apportioned, and so it was in this Case.

#### *Hunks and Alboroughs Case.*

232. A man made his Will and gave divers Legacies, and in the end of it, he gave all the rest of his goods to his Wife, who he made his Executor to pay his debts; she took Husband, who made the Defendant his Executor and dyed: against whom, the Wife Executrix brought Detinue of the goods of her first Husband, and adjudged maintainable; because she took the goods not as Legatee but as Executrix.

#### *Harwell and Lucas Case.*

233. A. seised the Mannor of K. leased 6. acres, parcel of it to I. S. for 21. years without any Remainder, and after lets the 6. Acres to I. D. for 26. years, to begin after the expiration of the first Lease

rendring rent; and afterwards made a Feoffment of the Mannor, and all his Lands to the use of the Feoffees & their Heirs upon Condition, if they did not pay 1000*li*. within 15. dayes, then it should be to the use of himself and his wife, the Reversion to their second Son in tayle with divers Remainers over; the Remainder to his right Heirs; Livery was made of the Land in possession, and not in the 6. Acres, the Money was not paid; afterwards the first Lessee for years attorned, the Husband and wife dyed, the first Lease ended, the second Lessee dyed; his Wife married the Defendant. The Son of A. distreyned for the Rent. It was adjudged in this Case, That although the reversion of the 6. Acres did not passe by the Livery without attornment, yet the attornment of the first Lessee was sufficient, and although the use to the Feoffees and their Heirs was determined before the attornment, yet the attornment was good to passe the Reversion to the last contingent use, and so the Title of the Sonne of A. to the Rent was good.

*Cranmers Case.*

234. King Henry 8. made a Lease of Land for 21. years, the Reversion came to E. 6. who *Anno primo* of his reign granted the same to *Cranmer* Bishop of *Canterbury*; He 6 E. 6. granted the Reversion to D. and C. to the use of the Bishop for life; the Remainder for 20. years to the use of the Executors of the Bishop, the Remainder in tayle to the Grantor, the Remainder to his right Heirs; The Bishop in time of Queen Mary was attainted of *Treason*, and all his Lands and Chattels given to the Queen by Act of Parliament. The Queen was possessed of the Term for 20. years and granted the same to I. S. It was adjudged, That the term for years in remainder was never in the Bishop to forfeit; but it was only an authority to nominate Executors in whom the Term should vest by purchase; and because by reason of his Attainder he could not make Executors, the Term for 20. years did never rise, and so the Grant of it by the Queen Mary to I. S. not good. See *Dyer* 310. *contr.*

*Plasow and Batch Wlors Case.*

235. A man brought a *Formedon* in Discender, and pending it he brought a Writ of Estrepment, which he delivered to the Defendant, who notwithstanding the Writ afterwards committed Waste. It was adjudged, the Plaintiff should recover his Damgages and Costs.

*Mawwoods Case.*

236. Wast was brought and assigned in digging of Clay, and selling of it, and in plowing of Meadow, and cutting down of 100. Oaks. The Defendant pleaded Not Guilty as to all, but cutting down of 6. Oaks which grew in a Hedge row, which he said were Pollards not suf-

sufficient for building ; upon which it was demurred and adjudged for the Plaintiff.

*Calthrops Case.*

237. *Ejectione formæ.* The Case was, *A.* seised in Fee, 26 H.8. in consideration of a Marriage between *E.* his Brother, and *F.* the Daughter of *W.* and 200 *l.* of Money paid by *W.* covenanted to execute an Estate of the Mannor of *N.* to the uses following, viz. of Lands of the value of 20 *l.* to the use of the said *E.* and *F.* for their lives, and after carnal Copulation to the use of the Issues of their Bodyes, with remainder over to *E.* and the Heirs of his Bodye, the remainder to the right Heirs of *A.* and of the residue to the use of *A.* for life, the remainder to *E. F.* for their lives, and after carnal Copulation, the remainder as before, and afterwards he executed the estate by Fine and Recovery to the said uses. The Marriage did not take effect, but *E.* by another Wife had Issue 3. Daughters : *A.* took a Wife, and had Issue by her, and dyed, *E.* and *F.* dyed, *C.* conveyed the Mannor to *D.* upon whom the eldest Daughter of *E.* entered, and made a Lease of her part. In this case, It was resolved, 1. That the use for the life of *E.* and *F.* did well rise, although the marriage took no effect, the use being declared upon an Estate executed, which needs not any consideration : but otherwise if it had been upon a Covenant to stand seised upon consideration of Marriage and Money ; for there without Marriage no use would rise, although the Money was paid. 2ly. That the Election should go to him who was to take the use. 3ly. That the limitation was not void for the uncertainty. 4ly. That in this Case, although the *Cestuy que use* did not make the Election during his life, yet he in the Remainder might after his death. 5ly. The Court doubted whether the Remainder did take effect, because the Marriage did not take effect ; and they conceived it was not the intent of the Parties, that should be advanced with so much Land, if the Marriage did not take effect. The matter was afterwards ended by Arbitrament.

*Lane and Coopers Case.*

238. The Case was, The Mannor of *H.* to make a Joynture was conveyed by a Deed in Latine, to himself and his VVife for the Term of their lives, the Reversion *Seniori puero de corpore ipsius W. H. & Hæred. de corpore suo legitimo procreato* ; the Remainder to the general tayl to the Husband, the Remainder to *I. S.* in fee thereof. Afterwards by an Indenture between him and *I. S.* in English, he covenanted that he and his wife should levy a Fine to *B.* and *C.* to the use of himself and his wife for their lives, the Remainder to the use of the eldest Child of the said *W. H.* and the Heirs of the body

of

of such eldest Child, the Remainder over; A Fine was levied accordingly, and after his wife died without issue, and W. H. married another woman, and by her had issue a Daughter his eldest Child, and a Sonne his younger: It was a Question which of them should have the Remainder. It was the opinion of the Justices, That the Daughter should have the Remainder, and not the Sonne, for that was the intent of the Ancestour as they conceived, though *puero* in Latine is intendable rather to an Issue Male than Female; and yet they said: That many Authors have taken the word indifferently to extend to both Sexes.

*Mich. 17, & 18 Eliz.*

*Andrews Case.*

239. *Q. Imp.* The Case was, A Tenant in Tayle, the Remainder to the Lord Mountjoy in fee of a Mannor with an Advowson appendant, bargained and sold the same by Indenture, not enrolled to I. S. and his Heirs, rendring 42 l. rent, with Clause of Distress and *Nomine pene*, and covenanted for further assurance to levy a Fine to the Bargainee. *Proviso*, that the Bargainee grant the next Avoydance to A. for life, and if it happen not void, then one life to his Executors, A. and I. S. afterwards levied a Fine, with the render of a Rent of 42 l. to A. in tayle, the remainder to I. S. in fee, B. in his life did not grant the Advowson to A. and dyed; the Church became void; A. entred for the Condition broken. It was in this Case resolved, 1. That the *Proviso* made a Condition. 2ly. That the Fine levied had not extinguished the Condition. 3ly. That no time being limited for the regrant, the Bargainee was bound to regrant it without request at his peril during the life of the Bargainor, if he were requested, in the life of the Bargainor; and because the Bargainor dyed, the Condition was broken.

*Fax and Colliers Case.*

240. *Ejectione firmæ*; the Case was, E. G. Bishop of York, 6. Nov. 18. had made a Lease from the date of the Indenture of Lands for 21. years to the Plaintiff; which Lease was confirmed by the Dean and Chapter, at which time there was unexpired 4. years of an ancient Lease made for 40. years: Afterwards E. G. was removed to Canterbury, and S. elected Bishop of York: the 4. years expired, the Plaintiff entred. The Defendant upon a Lease made to him by S. after the 4. years ended put him out. It was resolved by all the Justices and Barons in the Exchequer Chamber, That the



the Lease made to the Plaintiff was good ; yet they agreed, it should be void if it was not for the Confirmation. 2ly. They held, that the Lease now in Question being to commence presently in E-stoppe, but not in Interest was not void by the Statute of 1 Eliz. neither within the letter nor the intent of the Statute ; not within the letter, because it is not prejudicial to the Successor ; and the Statute is satisfied in the intent, it not being a Lease longer than 21. years, and having the Confirmation of the Dean and Chapter it is now good, although it was not good by the Statute of 32 H. 8.

#### Knowles and Lines Case.

241. *Ejectione firme.* The Case was, Sir Francis Englesfield was seized in the right of K. his wife of the Mannor of S. whereof a Messuage and Lands in question were Copyhold demiseable for 3. lives, 1 Eliz. Sir Francis Englesfield went beyond Sea with license for 3. years ; after his Licence expired the Queen sent a Privy Seal to him, commanding him upon his Allegiance to return ; he *spretis Mandatis* of the Queen, continued there, and adhered to the Queens Enemies : This being returned, a Commission issued to seize his Lands : upon which the said Mannor of S. was seized. The Queen at the Suit of K. his Wife, for her Releif, granted the Mannor to St. John and Fetiplace the Friends of K. for her Releife, *quandiu in manibus nostris fore conigerit* ; who entred, and were thereof possessed accordingly ; and then the Statute of 13, & 14 Eliz. of Fugitives was made. After which the Defendant procured a Warrant from the Lord Treasurer to C. and F. joynt Stewards for the Queen, to hold Court within all the Lands of Sir Francis Englesfield, and to grant Copyes according to the Custom of the Mannor. C. alone executed the Grant, and granted the Messuage and Lands to the Defendant's being Copyhold. In the Case was two points : 1. If the Statute of 13, & 14 Eliz. of Fugitives had taken away the Estate of St. John Fetiplace, and reduced the Mannor again to the Queen. 2ly. If the Court holden by C. only being a joynt Grant of Stewardship was good. Resolved, 1. That the Statute of 13, & 14 Eliz. of Fugitives was made in affirmance of the Common law, and did not give the Queen any new thing, but added only some Circumstances to it ; and therefore the Grant made to St. John and Fetiplace stood good, so as the Queen could not oust the Parentees ; and so by consequence the Grant of the Copyhold to Lines the Defendant was not good. 2ly. They held, that the Court holden by C. only was good ; For it was said a Disseisor, &c. might hold Courts ; and make admittance, and take surrenders and the like, because he is but an Instrument of Conveyance ; but he could not grant Copyhold estates.

242. Note

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242. Note by the Justices, If a man be to make sufficient proof, it may be made by Witnesse produced, as by Jury.

243. A man seised of Lands parcell Copyhold, and of Lands at the Comon Law, and by Licence of the Lord makes a Lease of them for 21. years, Provided if the Lessor, or his Wife, or his Heirs, or Assignes, or any of them give warning to the Lessee, that the Husband, or Wife, or their Heirs will dwell there, that then the Lessee should avoid, Except that the Lessor or his Heirs, shall pay to the Lessee then 20 l. The Lessor and his Wife dyes, and the Reversion of one part descendeth to the eldest Son, and the Reversion of the other to the youngest, and the youngest purchaseth the Reversion of the eldest, and then the youngest gives warning to the Lessee; It was the opinion of the Justices, that the warning given by him was good, and that the Law which hath severed the Reversion, hath severed also the Condition, although at the begining they were entire, and so for one part as Heir, and for the other part as Assignee, he shall take advantage of the Cndition.

244. A man makes a Lease of Land and of an House for years, reserving one Rent for all, and afterwards the Lessor grants the Reversion of all the Lands, saving the Reversion of the House to himself. Resolved, that by agreement betwixt the Lessor and grantee in the Reversion in pays, the Rent may be apportioned, if it be according to the quantity and quality of the Land which they have, otherwise not.

245. Tenant in Tail disseiseth the Discontinuee, and Levyeth a Fine, and the proclamation passeth, but the Discontinuee during the proclamation makes claime, and after the Tenant in Tail dyes, and the Discontinuee enters; It was the opinion of the Justices, that the Issue in Tail was barred by the Fine, and in this Case it was said, That if the Lord entreteth upon his Tenant, and enfeoffs a stranger, and the Tenant Reenters, he avoids the Disseisin and estate, but the seignoury is not revived but extinct.

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Pasch. 20. Eliz.

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the Lease made to the Plaintiff was good ; yet they agreed, it should be void if it was not for the Confirmation. 2ly. They held, that the Lease now in Question being to commence presently in E. stoppel, but not in Interest was not void by the Statute of 1 Eliz. neither within the letter nor the intent of the Statute ; nor within the letter, because it is not prejudicial to the Successor ; and the Statute is satisfied in the intent, it not being a Lease longer than 21. years, and having the Confirmation of the Dean and Chapter it is now good, although it was not good by the Statute of 32 H. 8.

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ture speaks nothing : but yet this Fine doth not deſtroy the Remainder out of the King, but the Conuſee ſhall have a Fee determinable upon the Tail.

247. The Maſter takes an Obligation of his Apprentice, that he ſhall not uſe his Trade within 4. years in the Town of N. where his Maſter dwells, and he is an Apprentice ; It was holden the Obligation was not good nor ſhould binde the Apprentice.

248. A man hath a Warren which extends into 3. Townes, and by deed makes a Leaſe of it for years, Rendering rent, and after grants the Reverſion in one of the Townes to another, and the Leſſee Attornes ; It was the opinion of the Juſtices, That the grantee ſhould have no part of the Rent, nor the Granter, becauſe no Covenant can be apportioned.

*Du'and and Cleypoole's Caſe.*

248. Information upon the Statute of 5. Eliz. of Tillage, That the Defendant had Converted 300. Acres of arable Lands to Paſtures : and that the Conversion hath continued from 15. Eliz. to 20. Eliz. The Defendant as to the Conversion pleaded Not guilty ; and as to the Continuance, the general pardon of 23. Eliz. upon which it was demurred : It was argued, that the Conſtitution did not extend to the Continuance of the ſaid conversion ; It was ſaid, That if A be ſeiſed of arable Lands and converts the ſame to paſture, and ſo converted Leaſeth it to B. who continues it in paſture as he found it, he ſhall be charged by the Statute ; And Note the words of the Statute are Conversion permitted, and Conversion continued is Conversion permitted, and the Statute doth not puniſh only the Conversion but the continuance of it. One the other ſide It was ſaid, That the Conversion and the continuance thereof, are 2. ſeveral things by it ſelf, and ſo the Conversion being only excepted, the Continuance thereof is within the Pardon. *Quere* ; the Caſe was adjorned.

*Term. Paſc. 24. Eliz.*

*Leeke and Grevells Caſe.*

249. Information upon the Statute of 5. Eliz. for converting and uſing of 2000. Acres of arable into paſture : The Defendant ſaid and juſtified as to 800. Acres. That the Queen by Deed under her Great Seal, Licensed him to encloſe the Mannor of *weſton* and *weſford* in the County of *Glouceſter*, and to make a Park, ſo as it was not within any Forreſt, and to Conyer and uſe the Land incloſed

closed of tillage into pasture *pro sustentatione ferarum*, *Danarum & avariorum suorum*, by which he enclosed them, and converted the Tillage into pasture for the Sustentation of his beasts; Upon which it was demurred; It was argued, that the License was not good, because the Statute of 5. *Eliz.* was to continue, but till the beginning of the next Session of Parliament, at which time the Statute ended, and was not revived till *Anno 13. Eliz.* so as in *Anno 9.* when the License was, there was not any Statute to prohibit the Conversion of tillage into Pasture; and therefore the License in 9. *Eliz.* could not dispense with the Statute of 13. *Eliz.* and the Statute of 13. *Eliz.* did not make such reviver of the Statute of 5. *Eliz.* as made mean Acts good by any Relation; *Quare*, the Case was not adjudged but adjourned.

*Dolman and the Bishop of Salisburies Case.*

250. *Quare imp.* brought, the Defendant pleaded the Statute of 21. *H. 8. Cap. 13.* of Pluralities, that the last Incumbent had a Benefice with Cure of the value of 8 *l.* and took another Benefice and was Inducted 1. *Eliz.* upon which the Queen did present the Defendant by Lapse; The Plaintiff shewed the *Proviso* in the Statute of 25. *H. 8.* that Chaplains qualified might purchase Dispensations and take 2. Benefices and that 1. *Eliz.* before the Parliament he purchased a Dispensation from the Pope, and after he took the second benefice and dyed; The question was, whether the Pope before the Statute of 25. *H. 8.* might grant dispensations; It was Resolved he could not, for that the Kings of England had been Sovereigns within their Realms of the Spiritualities; and the Justices held that the dispensation in question was made 1. *Eliz.* and so out of the Statute of 25. *H. 8.* and that this dispensation to retain a second benefice was against the Statute of 21. *H. 8.*

*Lacy's Case.*

251. In a *seire facias* upon a Recognizance for not appearing before the Justices of Assize at York, the Defendant pleaded that after the Recognizance taken, a Commission issued to the Admiral and others to hear and determine Treasons, Felonies, &c. done within the Jurisdiction of the Admiralty; and that the Commissioners sent to Arrest him before the day of his Appearance, because he had mortally wounded a Man upon *Scarborow* sands, if within the flux and reflux of the Sea, of which wound he dyed at *Scarborow*, and that thereupon he was Arrested and detained in prison till after the day of Appearance, and afterwards was Indicted and arraigned of the said Felony before the Commissioners; The Court inclined to be of opinion, that the Arrest was a sufficient excuse of his appearance, because the Recognizance is a duty to the Queen, and the Commission is the Act of the Queen, and all

that the Commissioners do is by authority from the Queen, and in her person, and shall be accounted her Act, and then when she herself is a cause that the Defendant could not appear, that she should not have benefit of the Recognizance.

252. The Condition of an Obligation was, That if the Obligor pay at or before the 25th day of March; he renders the money the 24th day; It was the opinion of *Anderson*, that if he render the money the last Instant of the 24th day, he saaveth his Bond; But the other Justices held the contrary, because the word (before) is not to have any Construction, but the Obligor shall be admitted to pay it before by agreement only of the Obligee. *Quare.*

253. A man seised of 3 Mannors in Fee of the value of 300 l. Covenanted in Consideration of the Marriage of his daughter, that he would suffer 20 l. yearly to descend, come and remain to his daughter and her Husband, and the Heirs of their bodies; It was the opinion of the Justices, that for want of Certainty, no use is created by the said Covenant and Consideration; but the same amounts to a Covenant and no more, and the words Descend, come and remain, cannot create an Use, but to the Heir apparent only.

254. In Trespas, the Case was; The Custom of a Mannor was *Quod quilibet tenens per copiam poterit admittere terras suas*, for life in Fee, or *aliter*, and that a Woman *cooperata viro poterit devise* her Copyhold Lands to any other, or to her Husband by the assent of the Husband; The Court held that the custome was not unreasonable, but because it was *poterit devorare*, where it should be *usi sunt devorare*, and also because it appeared, that the Plaintiff was Tenant in Common with the Defendant, It was adjudged against the Plaintiff.

255. A seised in Fee of a Messuage and of divers Lands time out of minde occupied with it, let parcel of the Lands to a stranger for years, and afterwards made his Will in this manner, *viz.* I will and bequeath to my Wife my Messuage with all the Lands thereunto Belonging in the occupation of the Lessee, and after the decease of my Wife, I Will that it with all the rest of my Lands shall remain to my Younger Son; It was the opinion of the Justices, that the Wife should not have the whole, but only that which was Leased before, and therefore that the remainder thereof could not be in the Younger Son, till after the death of the Wife, and that till the death of the Wife, the Eldest Son Heir at Law should enjoy it.

256. A man bound himself in an Obligation, that he and his Wife would levy a Fine upon reasonable request of the Obligee; he made

made the Request the Wife being very sick so as she could not travail. Resolved, that her sicknelle did save the Obligation from being forfeited.

357. A Copyholder in Fee, by License of the Lord made a Lease for years Rendring Rent, and having Issue a Son, and a Daughter by one Woman, and a Daughter by another, dyed, his Son within age, who before any Rent incurred, or any admittance dyed; Adjudged, The Eldest Daughter should have the Land, and that the discent of the Reversion is *possessio fratris quae facit sororem esse heredem*.

*Kerrick and Burges Case.*

258. A Lease in Reversion for years was granted to I. S. who dyed Intestate, his Wife assigned it to B. and afterwards took Letters of Administration, and made an Assignment of it to the Plaintiff. Resolved, that the last Assignee should have it.

*Trinit. 25. Eliz. in Exchequer.*

*The Queen, Her Almoner and Coxeheds Case.*

259. The Case was, I. S. Anno 9. of the Queen took the Office of Bayliff of the Hundred of A. and 11. Eliz. became indebted to the Queen by Obligation and 13. Eliz. he being seised of Land, Covenanted with C. in Consideration of Mariage with his daughter, to stand seised to the use of himself for life, and after to the use of C. and the Daughter in Tail; and afterwards he took the Office of Woodwardship of the Mannor of S. and became indebted for that also, and then granted a Rent Charge for years out of the Land, and then C. and I. S. joyned in a Fine to the use of the said I. S. for life, the remainder to C. and afterwards I. S. having purchased the Rent and possidd of goods and Chattells, became *Felo de se*, for which his Lands and goods were seized; It was the opinion of the Justices, the Almoner had no title to his goods because the Patent did not extend to the goods of a *Felo de se*, against the Queen for her debt, because it wanted the Words, *Licet tanget nos*: and that the Lands and goods of the said I. S. were chargeable, as well for the debts which were due by the Obligation, as also upon the accompt as well before the Conveyance as after, Wherefore C. paid the Queen her debts and had the Lands cleared.

*Newtons and Barnardines Case.*

260. A. had Issue 3. Sons, F. R. and G. F. dyed his Wife with Child; The Father A. devised in this manner, *viz.* To the Child



my Son F. his Wife now goeth with, 28 l. yearly to be paid to the use of the Child for 20 years. And if my Son R. dyeth before he hath Issue of his body, so as my Lands descend to G. before he come of the age of 21. years, then my Executors shall occupy it till G. be of the age of 21. years; the Father dyeth, R. enters, a Daughter is born, who enters and lets the Land to the Defendant rendering Rent; It was adjudged, That R. in this Case had an estate Tail, by Implication of the words of the Will, and that the entry of R. was a Lawfull eviction of the Terme, and destroyed the Rent.

*Hidons Case.*

261. It was Resolved by the Justices in this Case; An Abbot made a Lease for 8. years of Lands of the possession of the Abby, a Copyhold estate being in esse at the time, that it was an estate in being as did make the Lease for years void, by the Statute of 31 H. 8. of Monasteries.

*The Case of the Skinners of London.*

262. In Intrusion, the Case was. A. a Cittizen and Freeman of London seised of divers Messuages and Tenements of the yearly value and profit of 30 l. 6 s. 8 d. by his Will before the Statute of 1 E. 6. devised, the same to the Corporation of Skinners, and that 42 s. 8 d. thereof should be employed upon an *Obit*, and 12. Marks yearly thereof upon the *Priest*, and the Residue to be employed upon poor men of the Corporation decayed by misfortune, who inhabited the said Messuages and Tenements, and appointed the said poor men to pray for his soul, and further with the profits to repair the Messuages and Tenements, and after the Statute of 1 E. 6. of Chauntries was made; It was the opinion of the Court, 1. That Lay Corporations are Excepted out of the Statute for their Lands, which they have to increase their Treasure, for the good of the Corporation, but not for Lands which they have to employ to superstitious uses. 2. Resolved, that all the money which was given for the *Obit*, and the finding of the *Priest*, was a superstitious use, and given to the King by the Statute, but that which was given for the maintenance of the poor men; and although it was appointed them to pray for his soul which was a precept sureable for that time, and which was given for the Reparations of the Messuages, &c. was not given to the Crown by the said Statute; and *Turnors Case* was vouched to be adjudged, Where Land was given to the intent, that his Feoffees should keep an *Obit* with so much of the profits of it as they should think fit in their discretions, that the Land thereby was not given to the Crown, but so much of the yearly Rent as the Feoffees employed to that purpose, and if they had employed nothing that way, then nothing was given to the Crown; In the principal Case, it was adjudged against the Queen and Informer.

*Boswell*

*Bosseville and the Corporation of Bridgewater Case.*

263. King H. 8. Anno 33. of his Reign made a Lease to the Earl of Bath, of the Rectory of *Bridgewater* and of the Tythes of 2. Hamlets in *W.* parcell of the said Rectory, at the Rent of 10*l.* which lease continued till 2. *Eliz.* in which year *Bosseville* purchases from the Queen the Rectory of *W.* of the value of 10*l.* yearly, and had general Warrants of the Tythes within the 2. Hamlets, but the Lease to the Earl of Bath that was then in esse, was not recited; and afterwards 3. *Eliz.* the Queen granted the Rectory of *Bridgewater* and the Tythes of the 2. Hamlets and all which was in the Earl of Bath's Lease, to the Corporation of *Bridgewater*: *Bosseville* by vertue of the Statute of 18. *Eliz.* of Non Recitals and Misrecitals, which had retrospect to the beginning of the Reign of the said Queen, claymed the Tythes within the said 2. Hamlets against the Corporation: After a long Argument upon a Reference out of the Court of Wards to the Chief Justices *Wray* and *Anderson*, it was Resolved by them, That the Patent was good without recital to *Bosseville* against the Queen, by relation of the Statute of 18. *Eliz.* which makes Patents good from 2. November in the first year of the Queen, and should binde the Queen, her Heirs and Successors; but should not be good against the Corporation of *Bridgewater*, and therefore the Case in the Court of Wards was decreed against *Bosseville*.

*Diggs Case.*

264. An Annuity was granted in fee; at the first day of payment the Annuity was paid to the Grantee, and the Grantee made an Acquittance thereof to the Grantor; and in the end of the Acquittance he released to the Grantor all Actions; and after at the next payment the same was behind, and the Grantee brought a Writ of Annuity; against which the Grantor pleaded the Release in Barre: It was strongly objected, that by the Release the Annuity was determined, being a personal thing, and a thing in Action. But it was resolved by the Court, That for an Annuity before the day of payment an Action did not lye; and that before it was not therefore resolved by the Release of all Actions before the day of payment; and although an Annuity be a Personal thing for which the Grantee hath not any remedy but by way of Action, yet it is not a thing in Action. It was adjudged for the Plaintiff that the Action was well brought, notwithstanding the Release.

*Stantons Case.*

265. S. at the age of 16. years bound himself an Apprentice in London to I. S. by Indenture, containing the ordinary words of every Indenture for Apprentices; and afterwards by the command of his Master, who was Bailiff of an Hospital in London, and with those

Moneys and other Moneys of his Masters he went away, and had not discharged his Master against the Hospital; for which he brought Covenant upon the Indenture. The Defendant pleaded that he was within age in Barre of the Action; and also said, that upon this Custom the Defendant was impleadable only in *London*, and not in this Court. The Court seemed to be of opinion, That the Custom was a good Custom; and the Defendant was lyable to the Action within the Custom, and that he was impleadable within any place of *England* as well as in *London*, and therefore that the Action was well brought.

266. A Custom in *London* was set forth to be, That if many are bounden in an Obligation as Sureties, that if the Principal fail of payment, so as that it one of the Sureties be sued upon the Obligation, that he might have a VVrit *De Contributione facienda* against the Sureties; and said that such VVrit was brought in *London*, which was removed in *C. B.* It was remanded into *London*, because the Common Pleas could not doe right upon the Custom.

*Shelleyes Case.*

267. Upon a Special Verdict in *Ejectione firme*; the Case was, *Ed. Shelley* and *Joan* his VVife, Tenants in special Tayle, the Remainder in fee to *Ed.* had Issue then *Hen.* and *Richard*; *Joan* dyed, *Hen.* dyed in the life of *Ed.* having Issue *Mary*. It was found that *Ed.* by Indenture 1, & 2 *Phil. & Mar.* covenanted with *I. S.* and others to suffer a common Recovery to the use of himself for life, and after to *I. B.* for 24. years, and after the years expired to the use of the Heirs Males of the Body of the said *Ed.* and the Heirs Males of the Body of such Heirs Males, and for want of such Issue, to the use of the Heirs Males of the Body of *John Shelly* of *M. & C.* and 9. *Oct.* the first day of the Term *Ed.* dyed between the hours of 5. and 6. in the morning, and afterwards the same day the Recovery passed, and that by a VVarrant of Attorney made in the life of *Ed.* Execution was the 19. day of *October* by *Habere facias seisinam*, and it was found that 5. *December* following the wife of *Hen. Shelly* was delivered of *Hen.* the now Defendant: The Land was also found to be in Lease for years at the time of the Recovery, and that *Richard Shelley* the younger Son of *Edward* entred and made the Lease to the Plaintiff. In this Case there were these points: 1. If the Recovery suffered by *Ed.* the day he dyed, was good. 2ly. If being suffered by him Tenant in tayle, it might be executed after his decease upon the Issue. 3ly. If any use did rise upon the Recovery before Execution. 4ly. If *Richard* the youngest Son before the birth of *Hen.* the Infant took the Land by purchase, or by Discern: This

Case was many times argued at the Barre, and afterwards for Difficulty was by the Command of the Queen adjourned into the Exchequer Chamber, where it was argued by all the Judges of England; and at last it was resolved against the Plaintiff; and the reasons of their Judgements were these: 1. Because they all agreed that Richard Shelley was in by Descent, and not by Purchase after the death of Ed. and before the birth of Hen, the Defendant. 2ly. That the Recovery was good, although that Ed. dyed the same day before the sitting of the Court. 3ly. That Execution might be sued against the Issue in taylor, but that no Seisin was in the Recoverors nor any use rayed till Execution sued.

268. A Lease for years was made upon Condition to re-enter for non payment of the Rent: A man of ill fame out-lawed in 40. A-  
ction, at the last instant of the day demanded the rent; The Lessee asked him what authority he had to receive it; he said he was sent thither by the Lessor, but did not shew any warrant from him, or that he was his Servant. This was the opinion of the Justices, that if any one would swear that was true against the Party who demanded the Rent, that the Lessor should not enter; which being immediately sworn, and the Records of the Outlawries against him produced, the Justices dismissed the Lessee, and that the Lessor should enter upon him.

*Broughtons Case.*

269. Broughton a Justice of the Peace brought an Action upon the Case against the Bishop of Coventry and Lichfield, because he wrote a Letter to the Earl of Leicester one of the Privy Council; wherein he wrote, That the Plaintiff was a *Vermin* in the Common wealth, a false and corrupt man, an *Hypocrite* in the Church of God, a *Dissembler*; He hath used many corrupt practices to work his Vill, He procured my Register to be indicted of Extortion; He willingly and wilfully hath banished out one Greenwood a *convict* man of many offences, and knowing him to be an *Evil man*, maintaineth him against me, without Law, Conscience or Honesty. Upon Not Guilty, it was found for the Plaintiff and 300 l. Damages. It was objected, the Action did not lye, not being an overt Act, but words written in a Letter. Resolved the Act on did well lye being writ to a Stranger; but otherwise if it had been written to the Party himself; and it was also resolved, That although but some of the words will bear Action, yet the Damages are well assised, because they are put in to increase the Damages. In this Case it was said, if a slanderous Bill be exhibited in the Star Chamber against one, the Action doth not lye, because it is a Court of Justice, and hath Jurisdiction to redress things; but to exhibit a slanderous Bill into a Court

waich hath not power to redress, the thing is scandalous and an Act, on will lye for it,

*Griffith and Glarks Case.*

170. A Writ of Disceit by the Lord of the Mannor upon a Fine levied of the Land within ancient Demeasne: The Defendants pleaded that the Lord of the Mannor in the time of E. 2. did release to one who was Tenant of the same Land, *de omnibus servitiis & consuetudinibus, salvis servitiis infra scriptis, viz. pro una virgat terre 2 s. rent suit of Court and Reliefe.* It was resolved, The Custome of the Ancient Demeasne was extinct by the Release; but the Rent Reliefe and suit of Court, remained as parcel of the Seignory by the saving.

*Ivors Keales Case.*

271. A. seised of Lands in Fee, borrowed 20 l. of B. and they are agreed to assure Lands for it. They went to the Land, and A. there said to B. *I am indebted to you 20 l. If I do not pay you at Michaelmas, then I bargain and sell this Land to you; and if I do pay you, I am to have my Land again;* B. continued upon the Land a little space; the Monyes was not paid at Michaelmas. Adjudged the Land passed, to B. upon a Condition subsequent for payment of the Mony by B.

*Mildmay and Standishes Case.*

272. Action upon the Case for Slandering his Title; In which the Defendant justified; the Case was, A. seised of Lands in fee had Issue 3. Daughters, V. G. O. V. dyed without Issue. The Father for love and affection, and the better maintenance of G. and O. covenanted to stand seised to the use of himself for life, the remainder to G. in tale of one Moyety, the remainder to O. of the Moyety in Tail. Provided, it shall be Lawfull for the said A. for the payment of his Debts and Legacies, and better preferment of his Servants and other good Considerations, to devise the said Lands by his Last VWill, and dispose of the same for lives or years; and afterwards he devised the said Land to F. and the said O. his wife for 1000. years and dyed; wherefore the Defendant published the said Lands were assured for 1000 years, upon which it was demurred; It was said that the said V. might at any time determine any of the said uses; and induce other Estates at his pleasure, and the payment of his Debts and Legacies with good considerations for the Leases. But it was resolved for the Plaintiff, because the Proviso was against the Law to endue an Estate to a Stranger by way of Lease upon Covenant of Considerations to raise uses, but such power might be good upon an Estate executed; Or a Proviso good which did extend to determine the Estate; but not to give another Estate to Lessees.

*Peere and J. ofries Case.*

273. It was Resolved, That if the Metropolitan grant Administration

stration where the Intestate had not *bona notabilia* indivers diocesses, it is voidable only, but not void. But if a Bishop of a Diocesse grants Administration which belongs to the Metropolitan, the same is void.

*Russells Case.*

274. Trover and Conversion of goods by the Executors of R. against Husband and Wife, of the goods of the Testator, which came to the hands of the Wife *dum sola fuit*. The Defendant pleaded a Release of the Plaintiff after the death of the Testator, and after the Trover and Conversion; The Plaintiff said, he was then within age: It was adjudged, that because there was no Consideration alledged for the Release, it should not binde the Executor, because it should be a *Devastavit* in him.

*Twincos Case.*

275. Grandfather and Grandmother, Tenants in special Tail before the Statute of 27 H. 8. the remainder to the right Heirs of the Grandfather; The Father by deed enrolled Fine and Proclamation conveyed the Lands to the Queen and her Heirs and Successors, in the life time of the Grandmother. It was Resolved that by the Statute of 32 H. 8. by the Fine and Proclamation, the Issue in Tail was Barred.

*Vincent and Lees Case.*

276. It was adjudged in this Case, That when a man devised that his Sons in Law, should sell the Reversion of his Lands without naming their particular names, and that some of them dyed; That the Survivors could not sell the Land.

*Sir Peter Carewes Case.*

277. It was Resolved in this Case, That the Lord of a Mannor for life, or a particular Tenant having interest in the Mannor might grant Copies in Reversion, although they were not executed in the life of the grantor.

*Moris and Franklyns Case.*

278. The Statute of 27 H. 8. which began 4. Feb. Anno 27. H. 8. and ended 14. April. gave Monasteries of Petty value to the King: The Abby of T. being of Petty value *viz.* 100 Marks per Ann. was mean between the 1. day and the last day Surrendered to the King; It was holden the King should be in by the Statute and not by the Surrender.

*Thoroughgood and Tawers Case.*

279. In Trespasse, The Defendant pleaded in bar the Release of the Plaintiff of all his right in the Land; The truth was, the Plaintiff was a man unlearned, and the Release was read unto him only as a Release of the Arrarages of an Annuity; It was the opinion

opinion of the Justices, that he might plead *Non est factum* to it, and it should not bar him.

*Dorrell and Thyns Case.*

280. Error was assigned in a Common Recovery, That no Warrant of Attornay was; several Writs issued to Certifie one to the *Custos Breuium*, the other to the Chief Justices; They both Certified, there was not any Warrant of Attornay. The Plaintiff alledged Diminution, upon a new Writ of Error brought. Resolved, That he could not alledge Diminution, nor have a new Writ of Error after the two former Certificats, in the first Writ.

*Ive and Tracies Case.*

281. A man seised of Socage Land, and of Lands holden in Capite, by Act executed in his life, Conveyed the Capite Lands for the Advancement of his Wife, Issues and payment of his debts. Adjudged, he could not after devise the Socage Land.

*Bonnays Case.*

282. King E. 6. seised of the Mannors of R. and B. in the right of his Dutchy of Lanc. made a Lease thereof to B. for years rendering several Rents, upon Condition that if the Rent be behind 40. dayes after the Rents payable, to reenter; It was found by Office, that the Rent was behinde after the 40. dayes, and by another Office, that the Rent was tendered the Last instant of the 40. dayes, and that the Queens Officers of the Dutchy, accept of the Arrears and of the Rent at other dayes and Feasts, and made acquittances thereof to the Lessee, and had accompted for the same in the Dutchy, and after that the Queen to defeat the Lease brought the Intrusion: The poynts of the Case were, 1. If the Queen was bound to demand the Rent. 2. If the Tender was sufficient, and sufficiently found by the Office. 3. If the acceptance of the Rents accrued after the Office, should conclude the Queen of the Condition. The 4. If the Acquittances of the Officers should conclude the Queen. 1. It was Resolved, that the Queen ought to have made a Demand of the Rent before Reentry. 2. That the Tender found shall be intended a tender made upon the Land, which was a sufficient destruction of the Reentry. 3. That the acceptance of the Rent, at a new day after the Rent found behinde should conclude the Queen, and that the Act of her Officer should be the Act of the Queen her self, so as she could not enter for the Condition broken, and so it was adjudged against the Queen.

*Hunt and Gantleys Case.*

283. In a *Replevin*, the Case was this; Tenant in Tail, the remainder over in Tail, the remainder over in Fee; Tenant in Tail

Tail in remainder granted a Rent charge, and afterwards Tenant in Tail in possession suffered a Common-Recovery and dyed without Issue. The Question was, If the Recoverers should hold the Land charged with the Rent. It was Resolved, that the Recoverers, nor any which came in under their estate, should be subject to the charge of him in the Remainder, because the Recoverers are not of an Estate which they gained under the estate of Tenant in Tail in possession, whose estate is not subject to any Charge of him in the Remainder. 2. Resolved, That no Lease, nor Rent, nor estate made by him in the Remainder should charge the possession of the Recoverers.

*Brand and Glasses Case.*

284. Action upon the Case against an Inkeeper of *London*, for goods of the Plaintiff stolen out of his Inn: The Defendant pleaded an agreement betwixt them, that the Inkeeper should not be charged with any goods brought by the guest, but with such only as he should deliver to the Inkeeper himself, or to his Wife, and that the Plaintiff did not deliver the goods stolen neither to him nor his Wife. It was Resolved by the Court, it was a good bar of the Action; and this Case was put and vouched to be adjudged. 7 *Elix.* A Clothier came to an Inn with a Wayne of Wool to Lodge, at his entry, the Inkeeper said to him, That if he would, that he should take the Charge of his Wayne, that he should draw the same into an Inner Court, otherwise he would not answer for it; The Clothier did not do it, and the Wool was stolen: The Clothier brought his Action upon the Case against the Inkeeper; and upon shewing the special matter, the Inkeeper was discharged.

185. The Case was Lessee for life Covenanted for himself his Executors and Administrators, to build a new Wall during the Terme, and after he assigned over his estate. It was Resolved, that in this Case upon the Statute of 21. H. 8. that the Grantee of the Reversion, or the Grantor might have an Action of Covenant against the Assignees; for by the acceptance of the possession he had made himself subject to all Covenants concerning the Land, and the building of a Wall was a Covenant inherent to the Land, with which the Assignee should be Charged, though there wanted the word Assignees in the Deed.



Mich. 26. & 27. Eliz.

The Case of Saffron Walden.

286. King Henry 8. seised of the Mannor of Saffron Walden, parcell of his Dutchy of Lanc. Anno 6: of his Raigh, granted to the Guild of Walden, 2. Mills, a Market, and the Clarkship of the Market in Fee Farme rendering 10*l.* per Ann. and after 31. of his Raigh granted the Mannor, Rent and Fee Farme to the Lord Audley in Fee, 1 E. 6. by the Statute of Chauntries; the Guild was dissolved, by which the Mills and Markets came again to the King, with a *salvo* of the Rent to the Lord Audley. Afterwards the said King, E. 6. Anno 3. of his Raigh, granted the two Mills, Market and Clarkship of the Market, and also a Fair yearly to be holden there, to the Town of Walden in Fee Farme, *reddendo inde annuatim* to the King and his Successors, *vel tali Capitali Domino vel Dominis feodi illius ad quem vel quas de nostro pertinet vel pertinebit*, the sum of 10 *l.* per Ann. upon which Reservation they were charged with 10 *l.* per Ann. in the Exchequer, and upon a *scire facias*, they pleaded in discharge of the said Rent, that they had payed 10 *l.* per Ann. to the Heirs of the Lord Audley. The points debated were two, 1. That when the King had granted the 2. Mills and Market to the Guild reserving Rent, if the said Rent were parcel of the Mannor of Walden, as the Mills were, or was a Rent in grosse; for if it was parcel of the Mannor, then it was parcel of the possessions of the Dutchy; if it was not parcel, then it was a thing given to the King in Capite. 2. If by the Reddend. in the Patent of E. 6. the Town of Walden was charged to pay 10 *l.* to the Lord Audley, and other 10 *l.* to the King. This Case is very long and Learnedly argued by Walmerby, for the Town of Walden, and by Popham for the King. And it was Resolved by the Justices, That the Corporation of Walden should pay both the Rents. *Vide* the Book at Large for the Reasons.

Sir William Herberts Case.

287. Sir Matthew Herbert acknowledged a Recognizance to the King of 3000 *l.* and afterwards he made several Feoffments and Alienations of divers of his Lands, the residue descended to his Heirs: A *scire fac.* issued against the Heir and Terre Tenants who made default, and Judgment was given against the Heir aswell of his own proper Land, as of those which he had by descent. It was said by Cook, that although the Heir upon default shall be charged above his Assets, but that was where a man bound him and his Heirs in the

the Recognizance; but here the Heir should not be charged, because the words of the Recognizance are no obligation against the Heir, but only upon the Land; and therefore he prayed contribution against the other Feoffes. The Court refused to grant it, and said that one purchaser shall have contribution against another; but the Heir shall not have it, but shall be in the same degree as his Ancestors was.

*Bantings Case.*

288. In Trespas the Case was, *John Banting* contracted himself to *Agnes A.* after *Agnes* was Married to *F.* and Cohabited with him; *Banting* sued *Agnes* in the Court of Audience, and proved the Contracts, and sentence was there pronounced, that she should Marry the said *Banting* and Cohabit with him, which she did, and they had Issue *Charles Banting*, and the Father dyed; It was argued by the Civilians, that the Marriage betwixt *Banting* and *Agnes* was void; and that *Charles* was a Bastard. But it was Resolved by the Justices, that *Charles* the Issue of *Banting* was Legitimate and no Bastard.

289. The Case was, Lessee for years assigned the Terme to the Wife of the Lessor and a stranger, and afterward the Lessor bargained and sold for Mony by deed Inrolled; the stranger dyed, the Wife claimed to have the residue of the Terme not expired: Whether by the Bargain and sale, the Terme of the Wife was extinct or not, was the Question; it was said it was not; but Contrary, if the Husband had made a Feoffment in Fee with Livery; *Quere*, the Case was not Resolved. *Vide Plowdens Commentary. Amy Townsends Case.*

*Trishams Case.*

290. Tenant in Capite, made gift in tail to *I. S.* upon condition, that if he aliened, that it should be Lawfull for him to enter; *I. S.* aliened, Tenant in Tale entred for the Condition broken; It was adjudged, That a Fine for the Alienation of the Tenant in Tail was due to the Queen, and that the Queen might charge the Lands in whose hands so ever they came for this Fine; and the duty was not discharged by the entry of the Tenant in Tail, for the Condition broken, but the Tenant of the Land was Chargeable for the same.

291. Debt against an Executor for 100 *l.* in *C. B.* Afterwards Debt was brought against the same Executor for 100 *l.* in *B. R.* in which he confessed the Action, and pleaded the same to the first Action and that he had fully administred all but the said 100 *l.* The Court inclined to be of opinion, that the plea was not good, but that the Executor was chargeable to the first Judgment. *Quere*, because not Resolved.

292. *A.*

192. *A.* for money sold to *B.* all the Butter which should be made of his Cows in a year, and when he had made Butter, he sold the same to *C.* *C.* paid his money and set his mark upon the Barrells, and left them in the Custody of *A.* and afterwards *A.* delivered them to *B.* the first vendee; *C.* brought a Replevin; and *B.* claimed the property in the Butter by the first sale. It was said, that the property of it was in *C.* for the first Contract betwixt *A.* and *B.* was but a Covenant and agreement, that *A.* should sell the butter when it should be made, for before that he could not sell it, and before the making of it there was no property in it, and so no contract; and the second alienation, was a change of the property, and so *B.* hath no remedy for it; but his Action upon the Case against *A.* *Quere*, not Resolved.

The Earl of Huntington and Lord Mountjoyes Case.

193. The Lord Mountjoy bargained and sold Lands by deed enrolled: *Proviso*, that it is Covenanted, granted and agreed, that it shall be Lawfull for *J.S.* who was a stranger, to dig in the Lands for Mynes; It was adjudged in this Case, that although the word *Proviso* absolutely taken be a Condition, yet when it is coupled with other Words subsequent, It shall be construed to be a Covenant and not a Condition.

Crocock and Whites Case.

194. Debt upon an Obligation, the condition was: That if the Defendant Warrant and defend an Overage of Land to the Plaintiff against *J. S.* and all others, that then &c. It was Resolved, the word defend, shall be taken and shall not imply any other sense, but a defense against Lawfull Titles, and not against Trespasses, and this Case was put by *Anderson* Chief Justice. If one Covenants to make a Lease of all his Lands in *D.* and in *D.* he hath aswell Copyhold Land as Freehold Land, he is not by the Covenant to make a Lease of the Copyhold Land, for that he cannot Lawfully Lease without License, and the Law shall construe the Covenant to be of Lands dimiscable, and not of other Lands.

Roberts Case.

195. The Bishop of Bath and Wells granted to King *E. 6.* by Deed enrolled all his Farmes and Hereditaments of *W.* in *W.* in the County of *S. Habend.* to the King and his Heirs, and in *W.* the Bishop had a Rectory which extended into the County of *D.* It was holden in this Case, that the word Farme did not include the Rectory without a special averment, that the same was in Lease before, but the word Hereditament was sufficient to passe the Rectory.

196. A Statute is Continued during the Will of the King: It was Resolved, that the Demise of the King had determined his Will.

197. Note

297. Note, it was Resolved by the Justices, that if Lands are devised to 2. men, and to the Child with which the Wife of the Devisor is enſient; It is a good Devise, and the Child shall take by the Devise; but if he shall be Joynt or Tenant in Common with the other, *Quere.*

*Criſtes Caſe.*

298. A. gave Lands to his Son and his Wife for life, the remainder to the Heirs of A. the Son dyed having Issue within age. A. dyed Living the Wife; It was adjudged, that the Issue of the Son should not be in Ward for the Remainder, notwithstanding the Statute of 32 H. 8.

*Wells Caſe.*

299. Wells went beyond Sea; and wrote a Letter, that his Land should go in such a manner; It was adjudged to be a good Will and Devise.

*Cooks Caſe.*

300. It was agreed by the Justices in this Caſe; that if Lessee for years during his Terme, set up Posts for out-doors, and hangs doores upon them by Engines, that he cannot take them away at the end of the Terme, but otherwise they conceived, if it be of Indoors within the house.

*Mollinex Caſe.*

301. A. bound himself in an Obligation upon condition, that if he did pay to the Obligee the sum of 20 l. within 40. dayes after his personal being at Rome; and his Return into England; that the Obligation should be void: In debt brought, the Defendant pleaded, and tendered Issue that the Obligor never was at Rome; It was said by the Justices, That where the condition contains matter not triable, the condition is void, but where the matter is parcell tryable, parcell not; that the Condition is good: But in this Caſe the Justices doubted of it; because 2. things are Coupled by a Conjunction, so as they cannot be severed; otherwise, if they were mentioned in the Disjunctive.

302. A man was Arraigned and Condemned of Felony, and Imprisoned for it in Newgate; and an Execution out of the Exchequer at the suit of a common person was delivered to the Sheriff against him, who served it upon him: It was the opinion of all the Barons, that the Sheriffs might choose to serve the Execution or not, because the King had an Interest in the body of the person Imprisoned; but if they do serve the Execution, notwithstanding the pardon, yet it is good, by which it appeareth, that the Attainder shall not extinct the debts of other Subjects, but that if the Attainder be purged by a Pardon, the Execution of all other duties are

are revived, and stand good for the parties.

303. A man made a Feoffment in Fee reserving Rent, Suit of Court and Relief; and by the deed granted, that if the Feoffee his Heirs or assignes should be distrained for other services then are reserved in the deed, that then it should be Lawfull for the Feoffee, his Heirs and Assignes to distrain in his Mannor of D and keep the distresse, till he was satisfied the damage of so much as he had sustained by the distresse: The Feoffee made a Feoffment over; It was Resolved, that in such Case the second Feoffee might Distrain because it was a Covenant which ranne with the Lands.

304. Words, for calling the Plaintiff a *Caterpillar*, for he liveth by *Robbing of his Guests*, he being an Inholder; Adjudge the words not Actionable; otherwise if he say, *He is a Caterpillar and liveth by Robbing in the High way*.

305. Resolved, that an Action upon the Case lyeth, for calling an Attorney a *Common Bawd*: It was *Colborns Case*.

306. Note, it was Resolved by the Justices, that for a Common Nuisance done in *via Regia*, as for making a ditch in it, so as he cannot passe the way with his Cart and Carriages; an Action upon the Case will not lye, without shewing some particular injury thereby done to his person; for that he is thereby no more endamaged then the Kings other Subjects: but such Offence is to be presented in the Lect being a Common Nuisance; and not punishable by a private Action, but where there is to him a particular damage.

307. Debt upon Obligation, the Condition was, if the Obligor, his Executors or Assignes do pay to the Oblige, 10 l. within 3. Moneths next after his Arrival from *Rome*, the said Oblige, proving the same by Testimonial or other Witnesses; that then &c, the Defendant said, that the Plaintiff had not made proof that he was at *Rome*, the Plaintiff shewed a Testimonial under the seals of several great Persons living at *Rome* that he was there: It was Resolved in this Case, that the proof might be by Witnesses or Testimonial, and it is no Mischief; for if the Testimonial be Counterfeit, he may take Issue upon it, that it is not a true Testimonial.

#### *James Case:*

308. A man seised of Lands in Fee, took a Lease for years of a stranger by deed Indented of his own Land, the Terme expired, and the stranger entred, and the other brough Trespas. Resolved by all the Justices, that it should be an estoppel against the Lessee, but only during the Terme.

*Lincoln Case.*

309. It was Resolved in this Case : That an Action upon the Case doth not lye for calling the Plaintiff a Common Extortioner, unlesse it be averred that the Plaintiff was an Officer, for that none can be a Common Extortioner, unlesse he be an Officer.

310. An Action was brought for speaking these words, *viz. Thou* (meaning such an one) *art a perjured man and a procurer of perjury*, and many the like words tending to that purpose; The Court said, that the Action did not lye for the words, if they were not spoken directly and in the affirmative; and an Action doth not lye for words by circumstance tending to slander.

*Manxells Case.*

311. A man made a Feoffment in Fee of his Lands, and bound himself in an Obligation, that he and his Son would do all Acts devised by the Obligee; The Obligee devised a Deed of Release, the Father delivered it as his deed, but the Son did not deliver it, but because he was unlearned, he required the Obligee to read it unto him, and refused to seal and deliver it, where Debt was brought against the Father: It was Resolved, that the Son was bound to deliver it at his peril, because the Father had bound himself, that his Son should do it; and that Debt did well lye against the Father, his Son not sealing and delivering the Release.

312. Diverse persons brought one Joynt *Quare Impedit*, and in the Declaration they varied upon the title. It was adjudged that the Writ should abate, for the Judgment ought to be according to the Writ, unlesse there be Summons and severance; and upon diverse titles a joynt Judgement cannot be given, because there is but one Lawfull title;

313. Note, It was holden by the Justices, That an Attaint did not lye upon a verdict given in a Redisseisin before the Sheriff and Coroners: notwithstanding the Register fol. 20. is, that Attaint doth Lie.

314 The Lord licensed his Copyholder to make a Lease of Copyhold for 21. years to begin at *Mich.* following, the Copyholder made a Lease accordingly by Indenture; and also before *Mich.* by deed made another Lease to another for 21. years to begin also at *Mich.* following: *Anderson* Chief Justice said the making of the second Lease was a forfeiture.

*Hide and Newport's Case.*

315. A Copyholder in Fee took a Lease for years of the Mannor. Resolved the Copyhold was extinct for ever, and not only during the Lease.

*Allen and Givers Case. vide 103.*

316. Husband and Wife brought an Action upon the Case against the Defendant and his Wife, because the Defendants Wife said, that the Wife of the Plaintiff had procured one to Murder *I. S.* It was adjudged, that the Action did well lye, and it was said, that where one said to another, that he layed wait in the Highway to Rob him, that the Action did lye for the slander, though nothing succeeded upon it.

317. In false Imprisonment, the Defendant said at the time of the Imprisonment he was Sheriff of the County of *W.* and Justified by reason of a *Capias* directed to him to arrest the Plaintiff; the Plaintiff said, the Defendant was not Sheriff, but one *I. S.* It was adjudged against the Plaintiff; for the Court said, That all things which he did as Sheriff were Lawfull before he had a discharge of this Office, or perfect notice of a new Sheriff.

*Johnson and Smiths Case.*

318. Action upon the Case for slandering of his Title, and declared, That he was seised of Lands by descent from his Father, and was agreed with *I. S.* for a sale of the same Lands; and *I. S.* went to the Defendant being an Attorney and prayed his advice for the making the Assurance, and that the Defendant said to *I. S.* that he had heard, that the Father of the Plaintiff had granted a Rent Charge out of the Lands in Fee; by reason of which words *I. S.* refused to buy the Lands; and all other persons for fear of the said Incumbrance, to his damage, &c. The Defendant said he was an Attorney at Law, and *I. S.* came to him for Counsell; in secret he said the words spoken in the Declaration; It was strongly urged, that although he was an Attorney, that would not excuse him; because an Attorney is allowed to give Counsell, and the utterance of the words in private did not excuse, being spoken to the buyer himself. But it was Resolved the Action did not lye; and adjudged against the Plaintiff.

*Dawbney and Gooves Case.*

319. In Disceit; *D. G.* and *G.* were Joynt Merchants, they made *F.* and *S.* their Factors in *Barbary*, *G.* and *G.* conspired with *S.* to demand allowance of 1000 *l.* which was allowed them upon account, by which *D.* was damnified, for that the money was not due; and the truth was, *S.* only made the Account: The poynt was, if one Factor might make an Account for both; and if the two Merchants might take an Account for them all three: It was said, that they all ought to joyn in Account, but one solely might Assigne Auditours to take the Account; on the other side, it was said, there was no Joynture in Merchandize, and that one Merchant shall

shall have an Account against his Companion. *Quere*; the Case was not Resolved.

*Hill and Morfes Case.*

320. It was Resolved in this Case, That a Copyhold without a special Custome could not be entailed.

321. An Infant acknowledge a Fine before the Chief Justice, but the Conusee would not have the Fine ingrossed till his full age; The Infant came now with the Note of the Conufance and prayed a Writ of Error, and examination of his age, which the Justice agreed unto, and that an Entry be made thereof, and by that save to him his advantage.

322. A man sold his Land, and Covenanted to save the Vendee harmlesse upon request. It was said if the Land be extended by force of a Statute before the request, the Covenant is not broken, for that now the Covenant is become impossible by the negligence of the Covenantee himself; but if he had made request before the extent, there the Covenant should be broken for default of saving harmlesse.

*Foreman and Bobbams Case.*

323. *Rep'evin.* The Defendant avowed for a Rent charge of 3 s. 4 d. issuing out of the place where ~~the~~ which was one parcell of the Mannor of W. of which Mannor I. S. was seised in Fee and 3 s. 6. made a Feoffment of the said Close rendering Rent with distresses and dyed selfed, and it descended to his Son who bargained and sold the Mannor, with all Lands Rents, Reversions, services and hereditaments, which are parcell, or had been deemed, reputed or taken as part, parcell, or member of the Mannor; and the Defendant as Bayliff of the Heir of the Bargainee made Conusans for the Rent: and whether the Rent did passe as parcell of the Mannor, was the Question by the bargain and sale; It was said, it did not passe by the word *parcell*; but it passed by the words *reputed parcell*, if it were so reputed parcell at the time of the grant; *Quere*; in the Case is not Resolved in this Book; but *vide Pasch. 26 Eliz. in B. R. Levis. 1. part 13.* there the Judgment was given against the Avowant.

*Justice Windham's Case.*

324. A Lease was made, reciting, that whereas he had made a Lease of one Close to the Lessee for 20. years rendring 8 s. Rent, and another Lease of another Close to the same Lessee for 40. years, now he demised to the same Lessee both the said Closes for 40. year, from and after the determination of the severall demises; It was a question if the last Lease was good, because there is not any certain time of the beginning of it. Resolved the Lease was good; and the



**Lay** shall make an Interpretation of the demise *reddendo singula singulis*; how the Terme shall begin. *Vide Cook. 9. part, the same Case.*

*Dalman and Vavasors Case.*

325. *A.* seised in Fee of Lands 15 *Eliz.* suffered a Common Recovery to *B.* which Recovery was executed by *Habere facias seisinam.* After the Recovery had, it was declared by Indenture between the parties, that the Recovery should be to the use of the said *A.* for life without impeachment of Waste, the remainder to the first begotten Child of his body, and the Heirs male of such first begotten Child, and so to his 9. Issues, and for want of such Issue, to *V.* the Tenant or Defendant, and the Heirs male of his body; and if these Indentures were sufficient to declare the uses of the Recovery, was the Question; It was Resolved, that these Subsequent Indentures were sufficient to declare the uses of the said Recovery; for so was the Intent of the parties as appeareth by the Indentures; and it was adjudged, that the declaration by the subsequent Indentures should stand good, because there was not any other declaration of any other use.

*Scroggs and Lady Greshams Case.*

326. Debt upon an Obligation against the Defendant Executrix of Sir *Thomas Gresham*: The Defendant pleaded, several Obligations made by the Testator to the Queen, amounting to 8000*l.* *solvendum eidem Dominae Reginae, quando requisitus fuisset, ultra quam non habet*: upon which the Plaintiff demurred, because the Obligation not being upon Record, but taken in *pass* was not good, for that the Queen could not take but by matter of Record, and also the *solvendum* is not to the Queen and Successors; and the Queen is not to have the preferment of payment of her debts; unlesse they be debts upon Record; But yet in such Case if the Queen first sue, she shall be preferred, although she hath Judgement after another who sueth.

*The Lord Pagetts Case.*

327. The Case was, the Lord *Pagett* seised of divers Mannors, by deed Indented Covenanted with *I. S.* and others, that in consideration of discharge of his Funerals, payments of his Debts and Legacies, and advancement of his Son, and others of his blood, to stand seised of the said Mannors to the use of the said *I. S.* and others for the Life of the Lord *Pagett*, and after to the use of *C. P.* and other for 24. years, and after the expiration of the said Term of 24. years, to the use of *William Pagett* his Son in tail. Afterwards the Lord *Pagett* was attainted of Treason; The first Question was, If the Uses limited to *J. S.* and others were good; or not? Resolved, they

they were void, because they wanted a good consideration, but if he had made them Executors, and chargeable to the payment of his debts, then the same had been good. Second point, If the use limited to *William Pagett* should begin presently after the death of the Lord *Pagett*, or should expect untill the 24. years were incurred after the death of the Lord *Pagett*, or not at all? Resolved, That the use should be in *William Pagett* presently, before the 24. years were expired.

*Wiseman and Barnards Case.*

328. The case was Tenant in tail for the advancement of his Blood, Name, and Issue, covenanted to stand seised to the use of himself in tail, the remainder to the Plaintiff in tail, the remainder to the Queen in fee, and died; his issue entered, and suffered a common Recovery, and died without issue, he in the remainder entered: Resolved, That the consideration that the Land should continue in his Name and Blood, was no consideration to raise the use to the Queen. 2. Resolved, that he in the Remainder was barred by the common Recoverie, and the Remainder not preserved by the Statute of 34. H. 8. because it was not of the Provision of the Queen, but of a common person.

*Chenyes Case.*

329. A seized of Lands made a Lease for years thereof to B. and C. upon confidence for the preferment of the wife of A. and afterwards he made a Feoffment to B. and others to certaine uses of the same Lands: the point was, If the Lease for years were extinguished by the Feoffment? Resolved, That the Terme was not extinct, but was saved by the Proviso in the Statute of 27. H. 8. of uses, which preserved all Interest which the Feoffees had in the Lands to their own uses, and here B. had the Terme to his own use, and therefore not extinguished.

*Pimbs Case.*

330. A committed Treason 18. Eliz. and was attainted 26. Eliz. In the interim he was Confessee of a Fine levied by J. S. which fine was to the use of the said J. S. and his wife: Afterwards J. S. and his wife bargained and sold the Land for money to Pimb: It was conceived that the Land was in the Queen, upon the discovery of the Treason and Attainder, which intitles the Queen to all the Lands which Traitors had at the time of the Treason, or after, so as the estate of J. S. and his wife was thereby destroyed by the Relation of the Attainder. Wherefore Pimb sued to the Queen, and she granted him the Land, by her Letters Patent.

*Beckwiths Case.*

331. Husband and Wife seized of Lands in the right of the Wife; levied

levied a Fine; The husband detained the uses sole one way; and the Wife detained the uses upon the Fine another way; It was resolved, that both the Declaration of the uses were void; and so by consequence, the uses upon the Fine should be to the use of the Wife and her Heirs.

The Lord Mountjoy's Case.

332. The Case was this; A Mannor which did consist of Free Rents of 7. l. copyhold Rents of 3. l. and of domaines which had used to be devised for several Rents and Farmes, to which Mannor an Acre of waste parcel of the Mannor of the yearly value of 12. d. Heriots. Court Baron Leet. and perquisites of Court, which never were devised for Life, years or otherwise, did appertain, and were incident, was by a private Act of Parliament given to A. and B. in tail, with diverse remainders over, and the Donees were restrained, *Quod non facerent aliquid ad Nocumētum*, or disinherittance of the Tenant in tail, or them in remainder, and that they should have power to make a Lease for Life, Years, or at Will, rendring the true and ancient Rent of the said Tenements to be demised, and that all other acts should be void. Tenant in tail accepted of a fine from a stranger of the Mannor, by which they granted and rendred the Mannor for 300. years, rendring rent yearly, amounting to the free Rents, Copy rents, and Farme Rents, and 18. d. more, and 12. d. for the waste, to be paid at two Feasts, whereas the ancient Rent was paid at four Feasts: Tenant in tail died, and if the Lease for 300. years, was to be avoided by the clause of Restraint was the Question: It was Resolved, 1. That although by the purview of the Act, That all Estates restrained by the Act, should be void, yet the same should not avoid the Lease, as to the Tenant in tail himself, but it should be avoided by the Issues in tail. 2. Resolved, That in respect the Acre of waste was never devised before, that the Rent which is entire, reserved out of the whole, cannot be said the true and ancient Rent. 3. Resolved, That the reservation of the Rent at two Feasts, where the ancient Rent was payable at four Feasts, made the Grant and Render void, for that was to the hurt of the Issues in tail, for it was more beneficial to have the Rent at four Feasts, then at two Feasts; and all beneficial Qualities of the Rent, ought to be observed; and for these causes and others, the Lease for years was to be avoided by the Issue in tail.

Knight's Case.

333. The Case was, a Prior seised of divers houses, with the consent of his Covent, made a lease of them for years, rendring rent of 4. l. 10. s. 11. d. at four usual Feasts, upon condition that if the Rent was behind in part, or in all, at any of the said Feasts, he and

and his Successors to reenter. The Pilory came to the King by surrender : the King by his Letters Patents under the Great Seal, granted one of the houses to the Lessee, and another in Fee, and afterwards it was found by Commission under the Exchequer Seal, that parcel of the said Rent was behind at one of the said Feasts ; the King before the Commission returned, granted the residue of the houses to *J. S.* in Fee : It was resolved in this case, (amongst other things) That although without Office found, the Lease was not void, and although the Office was not returned before the date of the Letters Patents made to *J. S.* yet forasmuch as the Office was found before the Grant, and afterwards it was returned of Record, that the grant was good, and that in this case of Reentry without seizure the Lease was void.

*Owens Case.*

334. Upon a Fine levied, the Lands were rendred to *A.* and to his wife, and to the Heirs of the body of *A.* *A.* suffered a Recovery with Voucher in the life of his wife, and afterwards died, the wife died : It was resolved in this case, that the Recovery suffered by the Husband only, did not bind him who was in the Remainder, for betwixt husband and wife, there are no moyeties, and the joynt estate was not severed by the Recovery against the Husband only, and the husband was not the only Tenant to the *Præcipe*, but the Recovery as to the estate of the Husband took effect only by way of Estoppel, but it was no bar as to him who was in Remainder ; and in this case it was said, That if Lands be given to husband and wife, and the heirs of their two bodies, and the Husband alone suffers a common Recovery, that the same should not bind the Estate tail, although the husband doth survive the wife.

*Martin and Wilks Case.*

335. It was adjudged in this Case in B. R. That Land in Antient Demesne, is extendable upon a Statute Staple, or Statute Merchant. *Hill. 11. Jac. int. C. B. Cox and Barnesbyes Case* adjudged accordingly.

*Wollan Dixies Case.*

336. A seised in Fee of Lands in London, made a Lease to *J. S.* for years, and after by Deed, enrolled in the Chancery, he sold the reversion to *Dixie* and his wife, and afterwards the Rent was behind, and he brought debt against *J. S.* The Defendant said, That after the Lease, and before the Sale to *Dixie*, *A.* the Lessor by Deed enrolled in London, bargained and sold the Land to him ; It was adjudged a forfeiture of the Term, and judgment was for the Plaintiff.

*Rudhall and Milwards Case.*

337. *Rudhall* Serjeant at Law, *Cestuy que use*, before the Statute of 27. H. 8. Devised the use to C. his younger Son, and the Heirs Males of his body, the Remainder to J. his eldest Son, and his Heirs, upon condition that C. should not alien nor discontinue, but for the Joynture of his Wife, and only for the life of such wife. C. after the death of his Father entred and levied a fine to a stranger, and declared the use to himself and his wife, and to the Heirs Males of his own body, the Remainder to the right Heirs of his Father; afterwards C. having Issue male died, the Wife died; the Heir of J. the eldest Son entred upon the Lessee: It was adjudged that because the Statute of 27. H. 8. gave the possession in quality and condition with the use, and also gave to *Cestuy que* the same advantages as the Feoffees had, that the said Heir was enabled to take advantage of the Condition, be it a Condition or a Limitation.

*The Vis-Countess Bindons Case.*

338. The Executors of Viscount Bindon brought Detinue against the Widdow of the deceased Viscount, and declared upon the Detainer of certain Jewels: The Defendant did justifie the Detainer of them, as her *Paraphronalia*: It was agreed in this Case by the Chief Baron and others, That *Paraphronalia* ought to be allowed to a Widdow, having regard to her Degree; and in this Case the Husband of the Defendant being a Viscount, that 500. Marks, was but a good allowance for such a matter.

*Mich. 28 Eliz. in Cur. Wardor.*

*Mounson's Case.*

339. A Commission in the Nature of *Diem clausit extremum*, after the death of Robert Mounson issued to Enquire what Lands and Tenements he had the day of his death, of whom, by what services, the yearly value of them, who was his next Heir, and of what age he was: It was found, that the Father of Robert was seised of the Mannor of B. in Fee, and gave the same to Robert in tail, the remainder to G. brother of Robert, the Remainder to the right Heirs of the Father; That G. died in the Life of Robert, and Robert died without Issue, and that F. the Son of G. was within age, and the Lands holden of the Queen in Capite, and that Robert long before his death was seised in tail of H. Farm, and N. and 17. *Eliz.* levied a Fine to the use of himself in tail, the Remainder to F. the Son of G. in tail, and died such a day without Issue of his body; and upon this Office one Moun-

son

for the Heir general, prayed a new Office, for it was said that the said Office was insufficient to entitle the Queen to the Wardship of F. the Son of G. It was the opinion of the Court, that the Office was good to entitle the Queen to the Wardship of F. the Son of G. But if it was not, then a *Melius inquirendum* should issue forth, and not a New Office.

*Branches Case.*

340. In the Case of a Prohibition; It was Resolved, that an Union of Copyhold Lands, and of the Parsonage in the hands of the Parson, as Parson Impersonce, was no discharge of the Tythes of the Copyhold Lands; and in this Case also it was adjudged, That a Farmer of Lands might prescribe *in modo Decimandi*, but not in *non Decimando*.

*Moor and Williams Case.*

341. *Assumpsit*; The Case was; Lessee for years, the reversion to M. the Lessee in defence of the Plaintiffs Title, spent such a Sum money, and prayed contribution or recompence; Moor said in consideration thereof, he should have the like Lease after the expiration of the Term, which Williams the Defendant required, and the said Lessor refused to make, upon which Williams brought *Assumpsit*. Resolved it did not lie, because the Consideration was executed before the promise.

*Stanley and Bakers Case.*

342. A man possessed of a Lease for years, devised the same to his eldest Son, and the Heirs of his body, and if he died without issue to his youngest Son, (and the heirs of his body, and for want of such Issue, that the Term should remain to his Daughters; he died having two daughters, and afterwards another daughter was born; The eldest Son sold the Term, and died without Issue; the youngest Son died without Issue; the three daughters entred: It was adjudged they all three should have the Term, although the youngest Daughter was not born at the time of the death of the Devisor.

*Owens Case.*

343. Tenant in tail, the Remainder in tail: Tenant in tail bargained and sold to him and his Heirs, and levied a Fine, which was not alleged to be with Proclamation: It was adjudged that the Bargainee was not such a Grantee of the Reversion, as should maintain Waste, because it was no discontinuance, and but for the Life of Tenant in tail.

*Higham and Harwoods Case.*

344. A man had houses and Land, which had bin in the tenure of those who had the Houses, and he devised his Lands with the appurtenances: It was adjudged, That the Lands did pass by the words

words, with the appurtenances, for that it was in a Will in which the intent of the Deyisor shall be observed.

*Watkins and Ashwells Case.*

345. A seised in Fee, made a Feoffment upon condition, that if he or his Heirs, paid such a sum such a day to reenter: He died, his Son and Heir within the age of 14. years: The Mother of the Infant, without the privity of the Infant, and who was not Guardian in Soeage, in the name of the Infant, tendred the mony at the day: It was resolved, it was an Insufficient tender; otherwise if she had been his Guardian in Soeage,

*Carewas Case.*

346. The Abbot of M. was seised, and made a Lease for years, *De scitu Manerii Rectorie sue, & de omnibus edificis, &c. & de Decimis eidem pertinent, & spectant. Habendum dictum scitum cum pertinentiis.* The question was what estate the Lessee had in the Tythes at Will, or for years; It was the opinion of *Manwood* Chief Baron, that he had an Estate in them for years, and not at Will; for where several things are in a Grant, and after the *Habendum* comes to limit the Estate, it is superfluous to recite the particular things in the *Habendum*, and the Tythes being particularly recited, shall therefore pass by the *Habendum*, which limits the Estate for years.

*Crops Case.*

357. A man made a Lease for years, reserving Rent at *Mich.* and the *Annunciation*, and if it be behind by the space of a month, to reenter. The next day after *Mich.* the Lessor sent the Rent by his Servant to the house of the Lessor, who tendered it to his person, and he refused it, and afterwards upon the last instant of the day it was demanded upon the Land: It was adjudged a good tender, and the Lessor could not enter.

*Beverley and the Bishop of Canturburyes Case.*

348. A seised of an Advowson in gross, presented K. who was Inducted: the Advowson afterwards descended to B. and C. Coparceners. B. married J. S. C. married T. B. and had Issue. C. died, T. B. the Plaintiff being Tenant by the Curtesies, the Church became void by the deprivation of K. and because they could not agree in the presentment, the Clerk of B. the eldest Sister, was received by the Bishop, which was since dead, so the Plaintiff, Tenant by the Curtesie presented, and being disturbed, brought the Writ. The Incumbent being presented by the Queen, pleaded that K. being inducted, accepted a second Benefice of the value of 8. l. and so the Church was void by the Statute of 21. H. 8. of Pluralities. It was adjudged for the Plaintiff, for that the deprivation of K. and the

Plurality

Plurality of the Clerk of the eldest Sister since dead, were not denied after the acceptance of the second Benefice.

Saunders Case.

349. Information upon the Statute of 1. E. 6. for landing of goods at Ratcliff Custom, not paid nor agreed for: It was pleaded in a Bar *A.* was seized of the Mannor of *S.* in *Suffex*, and had wreck of the Sea appertaining to his Mannor by prescription; and that the Mannor *Contigue adjacet mare altum*; and said the goods were wreck, and cast upon the land of the Lord, and that he seized them, and so justified. *R.* If a good Justification. *d. 230.*

Morris and Webbors Case.

350. The Case in effect was this: A man was divorced *Causa fidei*, and afterwards took another wife and had Issue: It was argued by the Civilians, and also by the Justices, if the Issue was Bastard or not; It was adjudged that the Issue by the second wife was not a Bastard; For that by the Divorce the Marriage was dissolved à *pinculo Matrimonii*, and each of them might marry again: But admitt that the second marriage was voidable, yet it stands good till it be dissolved, and so by consequence the Issue born during the Coverture, is a lawful Issue.

Term. Hill. 29. Eliz.

Fanshaws Case.

351. In *Ej. Etione firme*; the Case was shortly thus: King Henry the Seventh erected and Founded an Hospital by the name of *Master and Chaplains of the Hospital of King Henry the Seventh de le Savoy*: And afterwards in the time of Queen Mary, a lease was made of Lands, parcel of the Hospital by the name of *Master of the Hospital Henrici nuper Regis Angliæ septimi vocat le Savoy*: and if it was a good Lease or not was the Question: The Case was first argued in the Exchequer, and there adjudged that the Lease was void by the Judgment of two Barons; Afterwards a Writ of Error was brought in the Exchequer Chamber; there the Case 3. *Eliz.* was argued again, but it was not adjudged: but afterwards the Case was compounded; but the better opinion of the Justices there seemed to be, that it was a good Lease, and that the words *De le Savoy, & vocat le Savoy*, were *idem sensu*.

Crosman and Reads Case.

352. Debt against the Defendant Executrix of *T. R.* her former husband upon an Obligation of 100. *l.* The Defendant pleaded fully



fully administred: It was found she had Affets to the value of 80. l. parcel of the 200. l. and that the said T. B. borrowed of F. R. her late Husband 60. l. and that the Defendant being Executrix to T. B. took the said F. R. to Husband, who died; the Court gave Judgment that the Plaintiff should recover the 80. l. and for the residue, *in misericordia pro falso clamore*, so as the Court conceive the 60. l. was not Affets in her hands.

#### Rous and Artois Case.

353. A man was Tenant for another mans life of a Mannor; *Cestuy queuse*, died. The Tenant continued possession of the Mannor, and held Courts, and made voluntary Grants by Copy: It was adjudged he should not bind the Lord, for he was but Tenant at Sufferance, who had not any Interest, and so he was a Disseisor of the Mannor.

#### Broke and Smiths Case.

354. The Case was: Lord and Tenant, the Tenant levied a Fine to the King, who afterwards gave the Land *Tenendum* of the King by Knights Service; The Lord distreined the Patentee for the Rent and Services. If the Seignory was revived, was the Question: It was conceived it was, and that it was suspended only for the time in the King: *Quia*, It was not resolved.

#### Knowles and Powells Case.

355. The Queen seized in Fee, made a Lease for years to one who was Out-lawed at the time of the Lease made, and afterwards the person was Out-lawed again, and before seizure came a generall Pardon of all goods and chattels forfeited; In this Case Resolved, First, that a man Out-lawed was capable of a Lease from the Queen, as a Farmer to the Queen, and that the Pardon with restitution was sufficient to revive the Term forfeited: Secondly, That a man Out-lawed and Pardoned had property in his goods.

#### Bonds Case.

356. Bond erected a Pigeon-House upon certain Lands which he held in Lease for years, the reversion in the Queen, being parcel of her Mannor of F. in the County of S. It was the opinion of *Manwood* Chief Baron and Gent. That none could erect a Dove-house but the Lord of the Mannor, or the Parson, and said that in ancient time it was accounted a Common Nuisance, presentable in the Leet.

357. Note by *Manwood* Chief Baron, where it is ordained by the Statute that for doing, misdoing, or not doing of a thing, the Offendor shall forfeit such a Sum, not expressing to whom, there the forfeiture shall be intended to be to the Queen, unless the penalty be assised for taking Goods, Chattels, or other things, in which the Subject hath a Property, and then he which hath the loss, shall have the forfeiture.

Warrams Case.

358. A Protection was granted to him by the Queen, and it was *Quod Prærogativa nostra Regia suscipimus in protectionem nostram Regiam corpus, terras & bona de Warren; Et volumus quod inquiratur, neque quod Prærogativa nostra arguatur*: The Protection was disallowed by the Court, and it was said, That the Prerogative of the King, which tends to the prejudice of the Subject, is not allowable.

Baldwine and Cooks Case.

359. A Lease was made to Husband and Wife for years, if they or any issue of their body should so long live; one of them died having no Issue. Resolved the Lease was not determined, for it is to be taken, if the Husband, or the Wife, or the Issue should live, the Lease was to continue.

Kernes Case.

360. Debt upon Obligation: The condition was, That if the Defendant within a Month after the decease of his Mother, pay to J. S. 20. l. or 20. Kyne at the Election of J. S. that then the Obligation should be void. The Defendant pleaded that the Plaintiff did not shew to him his Election which of the things he would have within the month; Resolved, that he ought to have shewed his Election to the Defendant within convenient time, before the expiration of the month; for it shall be against Reason that the Defendant shall be charged to make provision of both things.

361. The Case was, T. B. recovered in a *Quare Impedit*, and before he had Execution, he was Out-lawed. The Queen brought a *Scire facias* to execute the Judgment: It was resolved that the *Scire facias* to execute the Judgment was well brought, and there was privilege enough to sue execution of the Judgment, because the thing as it was in the Plaintiff, is in the Queen, and that is a thing in action, and therefore it cannot be a thing in possession in the Queen, and so she is not to present, but is to prosecute the Execution of the Judgment.

362. Note where an Obligation was taken with a Condition that he should not exercise the Art and Mystery of a Black-Smith within such a Town; Resolved, the Obligation was void, and the Condition a Condition against the Law.

Mascalls Case.

363. A. leased an house to B. for years, B. covenanted to repair the house, and that it should be lawful for A. his Heirs and Assignes to enter into the House, and see in what Reparations it stood, and if upon view any default should be found, and thereof warning be given to B. his Executors, &c. then within four months after such warning

warning it should be amended: A. granted the Reversion over to C. in Fee, who upon view gave warning to B. which upon warning was not repaired; upon which C. as Assignee of A. brought Covenant; it was said the Action did not lye, because the house became ruinous before his Interest in the Reversion: Resolved the Action did well lye, for it is not conceived upon the ruinous Estate of the house, but for the not repairing within the time appointed; and so it is not material at what time the house became ruinous.

*Caines Case.*

364. C. and his Wife being Joynt-Tenants, the Husband alone was impleaded, and made default: the Wife prayed to be received; it was the opinion of the Court, she was not receivable, because she was no Party to the first Writ; Then he prayed that he in reversion might be received. It was said he was receivable because but one of the Tenants for life was impleaded. The opinion of the Court, that he should be received; and might plead the Joynt-Tenancy in abatement of the Demandants Writ.

*Purfrys Case.*

365. P. Lessee of 40. year. of a Tavern in London, leased the same to J. S. for three years, who covenanted and granted with P. that from time to time he would keep the same a Tavern and sell Wine there, and that he monthly, and every month upon request, would make an account to the Lessor, or his Assignes, of all Wines should be there uttered or sold, and would pay to the Lessor or his Assigny 30. s. for every Tun of Wine sold. P. granted the Interest of the Reversion of the Term to a Stranger, and afterwards he demanded an account, and the Lessee refused, upon which he brought the action upon the Bond to perform Covenants, and if the Grantor should give an account notwithstanding his Assignment; or the Grantee should have an account as Assignee by the Statute of 31. H. 8. was the Question, the Case is argued but not resolved.

366. Note by *Anderson* Chief Justice, there is a difference between general words infamous, given to a private person, and when to a publique Officer or Magistrate; for a private person is not slandered without a particular Infamy, but by general words a Magistrate or Officer may be slandered. Wherefore Resolved, that these words spoken of a private person, were not actionable. viz. *Thou shouldst have sit on the Pillory, if thou hadst thy desert.*

*The Lord Wentworths Case.*

367. The Case was: The Lord *Wentworth* procured a Grant of the Wardship of *Withypoll* from the Master of the Waiks, Attorney and Auditor, and dyed. The Lord *Wentworth* his Son procured a Bill assigned, and upon it Letters Patent within four months to be made

to him, which Letters Patents were to this effect, That the Queen had granted to him *Custodiam heredis & terra de Withypoll*; Proviso, that if the said *Withypoll* shall die within age, not married, nor the effect of his marriage taken, that then the said Lord *Wentworth* the Son should have the Ward, and marriage of his Heir. at the end of his Letters Patent, there was a general *Non obstante* of all Statutes, Restrictions, &c. The Lord agreed with *Withypoll* for his Wardship, and in consideration of 400. l. to him paid, did release to him the Wardship, and gave liberty to him to marry at his pleasure; Proviso, if he did not pay 1200. l. at a certain day, the Grant should be void, before which day *Withypoll* died, his Brother being his Heir within age; and the Lord *Wentworth* sued to have the Wardship of him, by his Letters Patents. There were four points in the Case. 1. If the Patent be pursuant to the Statute of 32. H. 8. of Erection of the Court of Wards. 2. If this Statute which enabled the Masters and Officers of the Court of Wards, should have Authority to make Sale and Grants of the Kings Wards, had restrained the King himself, that he could not grant them, 3. If the general *Non obstante* had dispensed with the Statute in the two points aforesaid. The 4. If the effect of the marriage shall be said to be taken: This Case was argued by *Cook* and *Egerton* for the Queen: and *Heale* and *Telverton* for the Lord *Wentworth*: but the case was not resolved, but adjourned. *Idco* 24.

*Margery Davies Case.*

368. A man was bound in Covenant and Obligation upon it, to pay to the three daughters of a Stranger 10. l. a piece, at their several ages of 21. years: the party lying sick made his Will, and in performance of the Covenant, he devised to each of the Daughters 10. l. to be paid at their several ages of 21. years. One of the daughters sued his Executors in the Spiritual Court for her Legacy: and upon suggestion by the party that he is bound to pay her 10. l. at her age of 21. years a Prohibition was granted, and the intent of the Devise was, that he should not be twice charged.

369. One sued an Administrator for debt, upon *pleinement administr.* The Jury found Assets for part to the value and Judgment for that part for the Plaintiff, and that for the residue the Defendant *est sine die*, and now he brought a *Scire fac.* surmising Assets to the value of the Residue: It was the opinion of the Court that it did not lie.

370. Debt upon Obligation, with condition, if the Obligor pay to the Obligee 10. l. or four Kine such a day, at the then Election of the Obligee, the Obligation to be void: It was the opinion of the Court, that the Obligor is to tender both at the day appointed

ed, by reason of the words, *at the then Election*, which word *then*, shall have relation to the day appointed.

371. A Lease was made to three, *Habendum* to them for 99 years, viz. to the first for 99 years if he should so long live, and if he died to the Second, *pro residuo termino annorum tunc ventur.* if he should so long live, and if he died within the Term, then to the third, *pro residuo termino annorum ad tunc ventur.* It was the opinion of the Justices, that it could not enure by way of Remainder, because there was not any Estate *in esse*, during the particular Estate; Yet they conceived the Estate of the second was good, because it did enure as a new Grant. *Qu.*

372. In a false Imprisonment, against a Mayor, he justified; because he being a Magistrate, the Plaintiff said, *he was a Fool*: It was the opinion of the Justices, that if he called him Fool in the place and exercise of his Office, that the Imprisonment was lawful; otherwise not.

*Vdeson and the Mayor of Nottinghams Case.*

373. *Vdeson* was in the custody of the Mayor, upon the Statute of 23. H. 8. and he would not let him at liberty upon Sureties; wherefore he sued by Bill here, and Declared against the Mayor in *Custodia Marisshalli*, and recovered by Verdict. It was the opinion of the Justices, that by the Statute of 18. Eliz. none should sue for any penalty upon a penal Law, but by original Writ or Information, and so it was said it was adjudged in the Bayliffs of *Bosworths Case*.

*Griffiths Case.*

374. It was Resolved by the Justices, That Error lyeth in the Kings Bench, upon a Judgment given in an *Ejectione firme* in *Wales*, given before the Justices there.

375. A Draper having a Servant to sell Clothes in his shop, the Servant took the clothes and converted them to his own use: It was adjudged that Trespasse *vi & armis*, lyeth only against the Servant, because he had the possession as Servant; and it was Resolved, That in all cases where the Servant hath not a speciall nor general property, Trespasses lyeth.

376. One made a Lease for years, the Lessee devised the Term to his wife for so many years as she should live, and after to his Son, the Wife purchased the Inheritance, and sold the same again, and covenanted that it was discharged of all Incumbrances, and died: The Son claimed the Term; it was adjudged, the possibility to the Son, was a forfeiture of the Covenant and Bond of the Wife;

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Sir Thomas Gorges Case.

377. The Queen seized of a Mannor, to which an Advowson was appendant, and granted the Mannor *una cum advocacione Ecclesie*, the Church being then void; Adjudged the Avoidance did not pass, but the Queen should present *pro hac vice*.

378. A man who was bound in a Recognizance for the good Behaviour, was indicted that he called one Pealer, *Lier, Drunkard*, and said, *I will make thee a poor Kirton*, and also *Quare clausum fregit & averia cepit & injuste detinet*. It was Resolved by the Justices in B. R. That these were not words, which threaten a battery of his Body, without which the Recognizance is not forfeited.

379. Debt brought in the City of Oxon: The Defendant pleaded that he was one of the Barons of the Cinque Ports within the County of Kent, and pleaded to the Jurisdiction of the Court: upon which the Plainiff demurred. *Quia* If a good Plea. It was not Resolved.

Hayward and Bettsworths Case.

380. *Replevin*: the Defendant avowed for Rent; the Case was, The Father was seized in Fee, and let the Land to the Plaintiff for years rendring Rent, and afterwards he infeoffed a Stranger, and executed livery upon parcel of the Land in a Close called D. the Lessee nor any of his Cattel being there, but being in the house. It was adjudged that nothing passed by the Livery, but that the reversion of the whole descended, and therefore it was adjudged for the Avowant.

Pigott, Palmers and Grangers Case.

381. The Case was, A. was seized of Land, which he intended to sell to the Father for 160. l. of which 140. l. was paid by G. in consideration of the Marriage of Pigott with the daughter of Granger, and that the Land shall be conveyed for the Joynture of the daughter, and the Heirs Males of their Bodies; they intermarried and had Issue, the Plaintiff Pigot died, the wife took Husband Palmer the Defendant, and they accepted a Fine of a Stranger, with a render to the Stranger for 100. years, rendering the ancient rent, the wife died. It was resolved, that the taking of the Conveyance with the render for 100. years, made the Estate of the wife void, by the Statute of 11. H. 7.

Zouth and Bamfields Case.

382. In a Formedon in the Discender brought of the Moiety of a Mannor; The Defendant pleaded in Bar, that the Grandfather of the Demandant levied a Fine; *sur consauance de droit, &c.* with Proclamation of the moiety of the said Mannor, by which Fine it was granted and rendered to the Grandfather and his Heirs, whose estate the Tenant in the Formedon had. The Defendant replied, that at

the time of the Fine levied, and after the Demandant was seised of the Land in his Demefne as of Fee: It was Resolved, That the Defendant being Heir in tail against such Fine levied by his Ancestor, whose Heir he is, was estopped to aver his seisin and continuance thereof as a stranger at the time of the Fine levied; Nor to add, *Quod partes finis nihil habuerunt*. Against which it was objected; 1. That by the Statute of *Donis*, It is provided, *Quod finis in so jure sit nullus*. 2. That the Statute of 27. E. 1. of Fines doth not extend to Heirs in tail, but to Heirs in Fee, and that the Issues in tail are not bound by Fines which enure by way of Estoppel. 3. That the Statute of Fines extends to Fines *ritè Levatis*, and that a Fine is not *ritè Levatus*, when *partes finis nihil habuerunt*. To all which it was Answered and Resolved, That the Issue in tail is not excepted in those Statutes, and therefore is bound by the very Letter of the Acts. 2. Although the Issue in tail was not bound by any Fine by his Ancestors untill 4. H. 7. yet in such Case he was ousted to add, *Quod partes finis nihil habuerunt*, being privy as Heir to him who levied the Fine first. 3. That a Fine may be said *ritè Levatus*, although *partes finis nihil habuerunt*, and it may be *ritè Levatus*, although it be a Fine meerly by Conclusion.

#### Elmer and Goales Case.

383. In *Ejectione finis*, the case was: The Abbot of *West.* was seised, and let the Lands for 60. years to a Stranger; the Abby was dissolved, and King Henry 8. united it to the Bishoprick of *London*. The Bishop 12. *Eliz* made a Lease for three Lives, the Lease for 60. being in being for 16. years, which Lease was confirmed by the Dean and Chapter, the Lease for 60. years expired; the Lessees for three Lives entred and were seised, untill the Bishop entred upon them, and made the Lease upon which the Action was brought; The point was, if the Lease for three Lives were good; It was Resolved, it was good, and stood good, because the Statute of 1. *Eliz*. which made Bishops Leases was not pleaded, and the Statute being a private Act of Parliament, the Judges were not to take notice of it, if it were not pleaded.

#### Bulter and Babers Case.

384. The Case was; A. seised of the Mannor of *Toby* in Fee, and A. and his wife seised of the Mannor of *Hinton* to them and the Heirs of their bodies, the Reversion to A. in Fee: *Toby* amounting to the value of two parts, and *Hinton* to the third part, both holden in *capite*. A. by his Will devised the Mannor of *Toby* to his Wife for life, upon consideration that she should not take her former Joynture in *Hinton*, with divers remainders over; the Wife in pais disclaimed and waved her Estate in *Hinton*, and agreed to the Mannor

of *Toby*, and entred upon it; and if the Devise was good for the whole Mannor of *Toby*, or for two parts only, was the Question. It was Resolved in this Case by the greater part of the Justices upon argument in the Exchequer Chamber, that the waving of the Joynture by the Wife, made an immediate descent by Relation to the Heir; and that the Devisor was not such a person having Lands, as could dispose of it according to the Statute; and in this Case it was agreed by the Justices, That if one deviseth Land in which he hath nothing, and afterwards he purchaseth the lands, that the same is not a good Devise within the Statute of Wills, because he is not a person having, &c.

*Priscot and Chamberlains Case.*

385. In a Replevin: the Case was; Tenant for Life, the Remainder in Tail, joined in a Lease for years; afterwards he in the Remainder, in the life of Tenant for life, suffered a Common Recovery, the Recoverers sued execution upon the Lessee for years, and afterwards enfeofed *Lincoln Colledge in Oxon*, to whom the Son and Heir of the Tenant in Tail, in the life of his Father, released with Warranty: the Lessee for years reentred; the Tenant for Life, and he in the Remainder in Tail, both died; the Son of the Tenant in Tail had issue, who by his Bayliff distrained the chattel of the Lessee for years, as damage Feasants upon the Land, and he brought a Replevin. The point was, if by the common Recovery, or the Release of the Issue in tail, with Warranty, the tail was barred: It was agreed by all the Justices, that the Issue in tail was not barred by the Recovery; nor by the Warranty; but whether he should avoid this Recovery in this Action, being a possessorie Action, or put to a rent Suit, was the doubt; which was not resolved; The Case was adjourned.

*Hennage and Curtes Case.*

386. Trespas for breaking his Close in *Hainton*: The Defendant justified that there was a Foot way leading through the said Close from *Hainton* to the Foot-way of *Horn-Castle*, for all persons travelling from *Hainton* to *Horn-Castle*; they were at Issue upon the Prescription; and because the *Venue* was *de Hainton* only, whereas it ought to have bin from *Hainton* and *Horn-Castle*; It was said that the Tryal was erroneous, and the Judgment was reversed.

*Benet, Halscy and others.*

387. The Plaintiff was taken in Execution at the Defendants Suit by the Sheriff of B. and by an Habeas Corpus, he was brought to *Smithfield* by the Goaler of B. and there at Eight of the Clock of night, the Prisoner went into *Southwark*, and there continued all night, and the next morning he returned to *Smithfield* to his



Keeper, and there continued with him till the return of the Writ, at which day he brought him to the Lord Chief Justices Chamber at *Serjeants-Inn*, and he returned his Writ, and the Chief Justice committed him to the *Marshalsey*: It was judged it was no Escape in the Sheriff, and adjudged upon an *Audita Querela*, brought by the Plaintiff for the Defendants.

*Wray, Street, and Coopers Case.*

382. The Prior of *M.* was seised of three Messuages in the Borough of *Southwark*, and held them of the Bishop of *Canterbury*, as of his Borough of *Southwark*. The Priory came to King *Henry 8.* by surrender; Afterwards the Bishop gave the Burgage to the King, which Gift was confirmed by the Dean and Chapter. The King anno 36. gave the said three Messuages and others to *C.* and *D.* *Tenendum libero Burgagio* by Fealty only, and not in *Capite*, and *C.* and *D.* gave the Messuages to *W.* and his Wife; *W.* died, his Wife survived. King *Edward 6.* gave *Totam Burgagiam de Southwark* to the Mayor and Burgeses of *London*. In the time of Queen *Mary* the Wife *W.* dyed, by which the Messuages elcheated. Queen *Mary* gave them to one who gave them to *A.* who gave them to the Defendants. The Mayor and Burgeses of *London* entred: The Question was, if the Tenure should be in *Capite*, or in Burgage; and if they passed to the Mayor and Burgeses by the Grant of *Edw. 6.* of *Totam Burgagiam de Southwark*: It was adjudged against the Mayor and Burgeses of *London*, because there could not be several Tenure for these parcels, *Tenendum ut de Burgo*, and another Tenure for the Residue of the Lands in other places, which could not be holden de *Burgo*; and also because the Patent having two intents, the best shall be taken for the King.

*Pasch. 30. Eliz.*

The Queen and Bishop of *Lincolns* Case.

389. *Quare Imp.* The Case was: The Bish. of *Lincoln* Patron and Ordinary collated to a Benefice in 8. *Eliz.* The Incumbent took another Benefice without Qualification, by which the first was void: The Successor Bishop 18. *Eliz.* presented one *E.* but *non constat*, if by avoidance, death or resignation: *E.* being in, the Bishop was removed to *Wischester*: The Bishop that then was, certified that *E.* did not pay his Tenths, upon which the Church was void, and the Bishop collated *J. S.* to the Church. The Question was, if the Queen might now avoid the Incumbent, to have her presentment, which

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accrued to her upon the avoidance of the first Incumbent, who took a second Benefice without Qualification. The Justices at the first doubted it, but afterwards this Term, it was adjudged for the Queen against the Bishop.

390. Three bound themselves in an Obligation by these words, *Obligamus nos & quemlibet nostrum conjunctim*: the Obligor brought debt against one of them, It was the opinion of the Justices it did not lie, and that the words *Et quemlibet eorum* did not make it several.

391. The custom of Kent is, that the Wife shall be endowed of the Moiety of Gavelkind land, and shall lose her Dowry if she marry again: It was the opinion of the Justices, that she had not Election to be endowed of the third part at the Common Law, but was tied to the Custom.

Stampe and Hurchyns Case.

392. It was Resolved, That if an Executor gives his own Bond for money which his Testator was bound to pay by Bond, and so redeems the Bond of his Testator, that he may retain so much money in his hands, as if he had paid the money *in facto*.

Gorges Case.

393. One called another Cousening Knave, and said, He had couzened him: Adjudged the words not actionable.

394. It was Resolved; That if one who hath a Benefice, takes a Prebendary, that the same is not an avoidance of his first Benefice within 2 s. H. 8.

The Lady Greshams Case.

395. Sir Thomas Gresham seised in Fee of the Mannors of M. and C. in the County of N. 12. Eliz. levied a Fine thereof to the use of himself, and the Lady Ana his wife, To B. and C. with power of Revocation, that if Sir Thomas should pay 10. s. to B. and C. or the Heirs of B. then the same to be to the use of Sir Thomas and his Heirs. In 13. Eliz. he levied another Fine to the said Conusees of the Mannors of N. and F. to the same uses declared by another pair of Indentures, with the like payment of 10. s. B. dyed, Sir Thomas paid one Sum of 20. s. to C. in Revocation of the uses raised upon both the Fines; and after he raised divers uses and estates of divers Mannors holden *in capite*, without license of Alienation, and died. It was in this Case amongst other things Resolved, That the uses were not revoked, but that the revocation was void, because two several Sums of 10. s. ought to have bin rendred, and not one sum of 20. s. for they were several Indentures, and several Mannors, and could not be satisfied with one Sum; for which cause all the Mannors came

to the Lady by Survivor, and that there was no Fine due to the Queen upon his alienation without License.

The Queen and *Palmors Case*.

396. In Intrusion; the Case was; R. Bishop of *Chichester* having the Wardship of one *J. D. 12. E. 2.* devised by his Will, that his Executor should sell the Wardship, and with the money purchase Land, with which should be sustained three Priests to sing Mass, each to have six Marks, and if he could not purchase so much as to find the three Priests, then he should find two. The Bishop died; his Executors purchased Land, and gave the same *Deo & Ecclesie de Chichester*, so as he and his Successors should have the Issues and profits thereof for the sustentation of 2. Priests, whereof each to have 4. *l. per an.* and the Prebends of the said Church have always made Leases of the Land, and sustained the Priests as aforesaid, till the Statute of dissolution of *chauntries*; and the Defendant said he was in by the Lease of the Prebends, and traversed the Intrusion. The 1. point was, if by the Statute of 1. *E. 6.* of Chauntries, the stipend of 8. *l.* given for the sustentance of the Priests, or the Land was given to the Queen. 2. If by the Proviso of the Statute, the Land and the Rent in the Land only, or nothing be saved. It was said by *Anderson Chief Justice* that where a Gift is made to sustain poor Men and Mass-Priests, without limitting a certain quantity, how much to one use, and how much to the other use, there the Queen should have the whole Land; but if the quantity was appointed as to one use, and how much to another use, there the Land is not forfeited, but only so much as is employed to the superfluous uses. *Qu.* The Case was Adjourned and not Resolved.

*Slywright and Pages Case.*

397. In an Information upon the Statute of 32. *H. 8.* for buying of Titles; The Case was, The Plaintiff being Dissee of Lands, made a Lease by Indenture, being out of the Land to try his Title. It was a doubt if this Lease by Estoppel and not in Interest was within the Statute. It was adjudged it was, and was Maintenance, although the Lease was made to his Brother in Law.

*Fisher and Boyes Case.*

398. A Colledge in *Oxford* was incorporated by the Name of *Gardiani & Scholarius Domus sive Collegii Scholarium de Merton de Vniversitate Oxoniæ*, and they made a Lease of the Lands of *Custos Domus sive Collegii de Merton & Scholares ejusdem Domus in Oxonia*: It was adjudged that the variance was not material, but they did agree in substance, and the Lease was good.

The Countess of Rutlands Case.

399. It was holden by the Court in this Case. That Executors may have, and maintain Trover and Conversion, upon a Trover and Conversion in the Life of the Testator; but then in the Action the day of the Conversion, and the place of the Conversion, are to be alledged.

Bond and Richardsons Case.

400. Debt upon Obligation; the Condition was, If the Defendant pay 20. l. the 7. day of May 1598. at the house of the Defendant in Southwark, that then, &c. It was found by verdict that the Defendant paid the 20. l. before the 7. day of May, at the house of the Defendant in Southwark, but not *solvit* in the 7. day of May. It was adjudged a good payment.

Leverage and Cabbells Case.

401. *Ejectione firme*; The Case was; A. made a Lease to B. C. and D. by Indenture, to have and hold to them for their Lives; *Proviso*, and it is covenanted and agreed betwixt them, That the Second shall not occupy the Lands during the Life of the first, and the third not occupy, during the Life of the Second; The first occupied all and died; the third entred and made the Lease. It was adjudged, That by the Premises of the deed, the parties to whom the Land was devised being expressed, and in the *Habendum*, the Estate being limited as the Office of the *Habendum* is, That the *Proviso* that cometh after should not avoid it; and therefore Resolved that it was a joynt Estate, and that the *Proviso* should not sever it.

Hudson and Lees Case.

402. In Appeal of Maihem; The Defendant pleaded that the Plaintiff had brought an Action of Battery, and recovered therein for the same Battery and Wounding, upon which the Appeal was brought; and it was adjudged a good and sufficient Plea in Bar.

Lee and Lees Case.

403. A. had three Sons, F. I. and G. he devised his Land to I. for 21. years, to the intent to perform his Will, and pay his Debts, and he made him his Executor, and if I. dyed within the Term, then G. to have the like Term as I. had, and G. then also should be his Executor, and devised the Land to F. in tail, the remainder to J. in tail, the remainder to G. I. entred; F. died without Issue, I. had issue P. the Defendant, and died within the Term: It was the opinion of the Court, That if Land be devised for years to one, and if he die within the Term, that another shall have the residue of the years, that no Act of the first can prejudice the Remainder

of the second ; but otherwise if one who hath a Term deviseth his Term, with such a Remainder, and a difference taken between a devise of the Term, and a devise of the Land,

*Beverley and Cornwills Case.*

404. Note, in this Case ; which Case *vide* before, That if any Advowson comes to the Queen for forfeiture by Outlawry, and the Church becomes void, and the Queen presents, and then the Outlawry is reversed for Error, yet the Queen shall enjoy the Presentment, because it came to the Queen as a profit of the Advowson ; but if the Church be void at the time of the Outlawry, and the Presentment is forfeited as a Chattel principal and distinct, and then the Outlawry is reversed, the party shall have restitution of the presentment.

*Mare and Hales Case.*

405. The Case was ; A Vicar let his Viccarage, and all his Glebes and Tythes to I. S. for 21. years, rendring 22. *l.* rent to him and his Successors, which Lease was confirmed by the Patron, Dean, and Chapter ; the Lessee assigned over his Term to the Plaintiff, and averred the Rent was the usual Rent. The Plaintiff devised the Viccarage to the Defendant, rendring 30. *l.* per a. u. and for not payment of 15. *l.* half a years Rent brought debt. The Defendant pleaded the Statute of 13. *Eliz.* that no Lease of a Benefice with Cure should continue longer then the Lessor should be resident serving the Cure, without absence 80. days, and averred the Viccarage was a Benefice with Cure, and that before the Rent day the Lessor died, and that I. R. was made Vicar ; Whether the Lease was void, the Court was now divided in opinion : But *vide* in *Cro. 3. part 131.* It was Resolved that in this Case the Lease was void by the death of the Lessor.

*Page and Griffiths Case.*

406. *Ejectione firme* ; the Case was, Lessee for Life bargained and sold the Land to one and his Heirs, and afterwards 14. *Eliz.* he suffered a Recovery thereof to the use of the Bargainer : It was adjudged, that the suffering of the Recovery was a forfeiture.

*Spittle and Davies Case.*

407. A man devised Lands to his youngest Sons, *Proviso*, If his Sons or any of their Issues, devise any of the Lands before their age of 30. years, then the others shall have the Estate ; the eldest Son made a Lease thereof before his age of 30. years ; the youngest Son entred, and before the 30. years ended aliened the Land, the eldest Son entred : Resolved, 1. It was a Limitation. 2. That when the younger Brother hath once entred for the Alienation, then the Land

is discharged of the Limitation. *Vide Owens Rep.* 8. the same Case.

*Ever and Allons Case.*

408. The Custom of a Mannor was, That if any man had a Wife who was a Copyholder in the Fee of the Mannor, and had Issue by her, that he should be Tenant by the Curtesie of the Land; It was found that *A.* a Copyhold was seised, and had issue a Daughter, who was married to *I. S.* who had Issue; *A.* died, his Wife entred, the Wife died before admittance. The points were. 1. If *Ejectione firme* did lie upon a Lease made by Copyholder. 2. If by the entry of the Husband without admittance of the Wife, he should be Tenant by the Curtesie; The Court doubted of the first point, but for the second were of opinion that the Husband was well entituled to be Tenant by the Curtesie before admittance of the Wife, and the delay of the admittance by the Lord should not prejudice the husband, being a third person.

*Bewacorn and Caters Case.*

409. Sir Ralph Rowlet possessed of a Term of years devised the same to Sir Robert Cullin Lord Chief Justice during his Life, and after to a stranger, and made the said Sir Robert, with the Lord Keeper and others his Executors, and died. The Executors writ their Letter, and annexed the Will unto it to Doctor Dlac, praying that because they could not attend the Execution of the Will, that he would condition the Administration to *I. S.* which he did so, reciting in his Register, *Quia Executores distulerunt & adhuc differunt executionem Testamenti.* Afterwards Sir Robert without assent of the Administration, entred into the Term and devised it; The point was, if the Letters so written was a Refusal of the Executorship: It was Resolved by the Justices, after the Case had been argued by the Civilians in Court, that it was a Refusal of the Executorship.

*Osborn and Gameones Case.*

410. The Case was; *I.* leyed a Fine of 48 *s.* 8. *d.* Rent charged in *W.* to *I. S.* and his Heirs, and the use was to such persons as *F. S.* should declare, who afterwards declared the use to *F. D.* and his Heirs, and the Defendant in a Replevin avowed as Bayliff of *I. D.* It was demurred unto because he did not shew any Attornment: The Question was, If *Cessuy que use* of a Rent in esse grant a Rent by Fine after 27. H. 8. might avow without attornment. *Quere*, not Resolved.

*Oguell and Pastons Case.*

411. In Debt in the Exchequer; The Case was: *W.* and *F.* acknowledged a Recognizance of 200. *l.* in the Chancery to the Plaintiff for payment of money at a day to come, they failing, upon two

Scire

*Scire facias* issued, and *nihil* returned, a *Levari fac.* issued to the Sheriff of N. and afterwards a *Capias ad satisfaciendum* to the Defendant, the Sheriff who arrested W. the said W. being then in his Custody upon an Indictment of Felony, who after upon his arraignment was found Guilty of the Felony, and afterwards he escaped, being let at large. The points were, First if a *Capias* did lie upon a Recognizance in Chancery; Second if it did not lie, yet if it was void or voidable: Third if the Conviction of Felony had discharged the Execution: Resolved, That if the Chancery had consideration of the Cause, and they do award an Erroneous Process or Misaward a *Capias*, by which the party is taken in Execution, yet it is a lawful Execution, and the Sheriff is chargeable with the Escape, and he is not to examine the Error of the Court in avoiding the Execution. Second that the Conviction of the Felony was no discharge of the parties Execution, and it was adjudged against the Defendant.

412. Debt brought in *Co. B.* for an Amercement in a Court Baron, the Defendant would have waged his Law; the Court doubted of it, and some Presidents were shewed, as *Trin. 6. Eliz. Tindal* and *Tuckers Case*, that he might in such Case wage his Law. *Quare.*

The Queen, Bishop of *Lincoln*, and *Shiffings Case*.

413. *Quare Imp.* The Case was, the Countess of *Kent* had two Chaplains by Patent, a third had no Patent of Chaplainship, but he was first Retained, and took two Benefices by Dispensation: It was adjudged, he was Lawful Chaplain, for the Patent is not of necessity, but only in Case where he hath Cause to shew it, and he hath no cause to shew it, because her Retainer was good without a Patent.

*B. 7d* and *Adams Case*.

414. In this Case, a Case of a Prohibition to stay a Suit in the Spiritual Court, for Tythes of the Rakings of Lands, after the Crop of corn was carried away: It was holden, That the prohibition would not lye, but that Tythes should be paid of Rakings: But *vide 42. Eliz. in B. R. in Gree and Haales Case*: It was adjudged that by the Custom of the Realm, Tythes should not be paid of Rakings.

*Batley and Trevillions Case*.

415. Replevin: The Defendant avowed, That *I.* and *A.* his Wife were seised in Fee in the right of his Wife, and devised the Land, in which to *I. H.* and *I.* his Wife, with *E.* their Daughter for 60 years, rendering four Marks Rent. Afterwards *38. H. 8. I.* and *A.* his

his Wife levied a Fine, and the Conusees rendred the Land to *A.* for Life, the remainder to *Tho.* their Son in tail, with remainder over. *A.* died, *Tho.* entred upon the Lessees, and made a Feoffment to *J. D.* and others to perform his Will, the Lessees reentred; *Tho.* 7. *Eliz.* by his Will ordained that his Feoffees should stand seised untill they had levied sufficient to pay his debts and Legacies, which were not payed, and therefore the Defendant as Bayliff to the Feoffees, made consuſance, and as to the rest he avowed, for that *Tho.* was seised in Fee of the place in which *C.* and *6. Eliz.* devised the same to *H. L.* and *M.* for Life, rendring 10. s. Rent, and afterwards entred upon the Lessees, and levied a Fine thereof to the use of himself in Fee; and afterwards infeoffed thereof the first Feoffees to the use of his Will; the Lessees reentred, and he made his Will as above, and died, and for 3. l. rent for two years he made consuſance as Bayliff to the surviving Feoffees: The Plaintiff to the first Avowry said, that *Tho.* was seised in Tail by the render of the Fine, and the tail descended to *H.* his Son: and then *E.* one of the Lessees who survived to husband the Plaintiff, *b. que hoc*, that *Tho.* infeoffed the Feoffees to such uses as the Defendant hath alledged, and as to the other Consuſance, the Plaintiff demurred in Law. The Jury found the seisin of *A.* and her Husband, and the Lessee for years to the three persons, and the Fine and Render to the seisin of *Tho.* and the Feoffment of *Tho.* to *J. D.* and others to perform his Will; and they found a Letter of Attorney to persons whereof the said *J. H.* one of the Lessees was one *conjunctim & divisim*, to enter in all the Premises, and take possession, and deliver the same to the Feoffees or one of them; and that after *Tho.* made his Will as before, and that *C.* one of the Attorneys to one of the Feoffees, and *D.* another of the Attorneys delivered seisin to another of the Feoffees. There were divers points in this Case; First, because the Jury have found a Devise of Land and no Tenure; if the Justices could judge the Tenure to be Knight Service or Soccage: this point the Justices said they would not meddle with. Second point, admit the Land to be holden *in Capite*, and that the Land passed by the Will: they held that but two parts of the Land passed by the Devise. 3dly. When he devised that his Feoffees should stand seised, and he had not Feoffees but he himself was in possession: the Justices held it was devise of the Land itself. 4thly. They held where one of the Lessees made Livery as Attorney to the Lessor, that he did not thereby extinct or surrender the Term. 5thly. When an Authority is to four, *conjunctim & divisim* to execute Livery: that one might execute Livery in one part, and the other in another part. 6thly. They held when Tenant in tail of Lands in lease for years, makes a Feoffment, and



and the Lessee reentered, it was a discontinuance. 7thly, They held when Tenant in Fee simple of a Reversion expectant upon Lease for years deviseth two parts of the Land, that no part of the Rent passeth. 8thly, In this Case, because the avowry is made for the whole Rent, and it appeareth he hath title but to two parts; It was holden he should not have a Return for any part. 9thly, They held when the Avowant makes title but to two parts of the Rent, and the Jury assesse damages for the whole Rent, that the Avowant could not have Judgment, unless he Released the damages. 10thly, When the Lessor entered upon his Lessee for life, and made a Feoffment, and the Lessee reentered, the Justices doubt, if the Rent was revived.

*Keale and Carters Case.*

416. False Imprisonment, the Defendant Justified; that he was Constable, and that the Plaintiff brought a Child of the age of 2. years and no more into the Church, and there left it, to the intent it might dye for want of sustenance, wherefore he Imprisoned him till he agreed to take away the Child; It was the opinion, that the Justification of the Defendant was good, because the Act of the Constable was but to prevent a felony, which he might do by virtue of his Office.

*Fenwick and Mifforths Case.*

417. The Case was, A. man seised of Lands in Fee, Levied a Fine thereof to the use of Wife for life, the remainder to the use of his eldest Son and the Heirs males of his body; the remainder to the right Heirs of the Conusor: The Conusor made a Lease for 1000. years to B. the eldest Son dyeth without Issue having a daughter; the Conusor dyeth, the Wife after dyeth, the eldest Son Leaseeth the Lands to the Plaintiff: It was adjudged in this Case, it was a Reversion and no Remainder, and this limitation to his right Heirs was merely void.

*Sir M<sup>o</sup>e Finch and Throgmorton's Case.*

418. The Case in effect was this, The Queen made a Lease for years, rendring rent with a *Proviso*, that if the rent be not paid at a day limited, that the Lease should cease, without making mention that it should be paid at the Receit; and if it should cease before Office, was the Question: It was Resolved by *Mannood* Chief Baron and all the Barons in the Exchequer, That *ipso facto* upon default of payment, the Lease was determined according to the purport of the Contract, and that immediately without Office; For the *Proviso* shall be taken to be a limitation to determin the estate, and not a Condition to undo the estate, which cannot be deferred, but by an Office in the Case of the Queen.

*Green*

*Green and Edwards Case.*

419. A Lease was made by a Man for 80. years if his Wife should so long live; and if she dye, that the Son should have the Land for the Residue of the Terme then to come; It was adjudged void as to the Son, for that there is no residue of a Terme which is before determined.

*Hicks and Palingtons Case.*

420. Complaint was in the Court of Request, for average of a Ship spoyled of certain goods shipped from Bristol to Galicia in Spaine: The goods were taken by a Pyrat by violence; It was decreed, Average should be paid, because the Merchants had assented to pay it after the Ship was robbed.

*The Queen and Vaughans Case.*

421. In a *Quo Warranto*, the using of Liberties, &c. the Defendant pleaded, That an Abbot was seised of Waifes and estrayes by prescription, and that he used and excised to have *Catalla fellonum* within 3. months before the suppression of the Abby, but did not shew by what Title, Grant or Charter; and so by the Statute of 32 H. 8. and by Patent *de tot, talia, tanta & Consimilia Libertates*, he concluded that *eo Warranto*, he claymed the Liberties; It was Resolved by the Justices, that he ought to shew the grant made to the Abbot, and also what estate the Abbot had in them; Because the Statute doth not revive other estate in the Liberty, but which came to the Crown by the dissolution of the Abby; But Resolved, that the Conclusion *eo Warranto* was good, because it shall be taken *disributivè*, that he used those which might be appurtenant, as appurtenant, and the other by the other title.

*Smith and Verres Case.*

422. Debt upon *mutuatus* of 5l. 6s. 8d. and because the several summes in the Declaration did not amount to the sum in demand; the Judgment given in it was reversed.

*Sherrot and Holloweyes Case.*

423. *Replevin*. The Case was; a Feoffment was made by Indenture, rendering 3l. rent, which clause of distresse, and the Feoffor Covenanted to make further assurance of the Land, the Feoffor levied a Fine to the Feoffee who rendred 3l. rent; It was Resolved he might avow for the first rent notwithstanding the Fine, and that the Remainder is not a grant of a new rent, but, a Confirmation of the old rent.

*Mead and Cheneys Case.*

424. A recovery is had in Debt against an Administrator, and a *Scire facias de bonis* of the Intestate, upon which a *Devasavit* was returned; It was adjudged, that an *Elegit lyeth de bonis propriis* of

of the Administrator, which he had the day of the Judgment.

*Barton and Andrewes Case.*

425. Note this Case was the very Case agreeing *verbatim* with *Bennet and Halseys Case*, which see before *Self*. 387.

*Hil. 33. Eliz.*

*Degoze and Rowes Case.*

426. Debt against the Defendant as Heir to his Father upon an Obligation, the Defendant pleaded his Father was seised in Fee, and Covenanted with I. S. and others, to stand seised to the use of himself for life, the remainder to the Defendant in tail, the remainder to his daughter in tail, the remainder in Fee to his right Heirs with a *Proviso* of Perpetuity, and that the Father dyed and he entred, and so had nothing by discent; Upon a special verdict the Case was, The Father caused certain Indentures to be written and engrossed, comprehending uses betwixt I. S. and one M. and him, but would not M. should be acquainted with it, till I. S. had agreed to it; But he delivered the deed to a Scrivenor to the use of I. S. and M. so as I. S. would agree to it; the Scrivenor went with the Deed to the house of I. S. but could not speak with him, and after I. S. dyed, never having notice of the Deed; It was adjudged in this Case, that the Father never Covenanted, because the agreement of I. S. was a Condition precedent to the essence of the Deed, and so there was no Deed to raise the uses; and therefore it was adjudged against the Defendant.

*Halme and Fees Case.*

427. The Case was, Grandfather, Father and Son, the Grandfather Tenant in tail made a Feoffment in Fee, rendering rent to him and his Heirs, and dyed; the Father excepted the rent, the Feoffee levied a Fine with Proclamation, and 5. years passed; It was adjudged, the Son was not barred, because the acceptance of the rent was but a Conclusion, but did not extinguish the Right, and so the Son was not barred by the Fine, and 5. years which occurred in the life of the Father.

*Fulwood and Wards Case.*

428. Tenant for years determinable upon the Life of the Lord Pagett, by deed granted a Rent of 10*l.* issuing out of the Land, with Clause of distresse, the Lord dyed; It was Resolved, that by his death the Rent was not determined, but Election did remain in the grantee, to make it either a Rent or Annuity.

*Cornwallis*

*Cornwallis Case.*

429. He was Indicted, that he was *Communis publicator* *secretorum Domine Regine*, and of other persons impannelled with him, to enquire for the body of the County *de diversis Feloniis*, against his Oath in that behalf taken; and because it was not found, that he was sworn to keep secrets, nor that the secrets which he discover did touch his Oath, the Judgment was adjudged insufficient.

*Langles and Hayres Case.*

430. Debt upon the Statute of 2 E. 6. for treble damages, for not setting forth of Tythes; the Declaration recited the Statute to be in 1 and 3 E. 6. which could not be in 2. years of the said King; therefore after verdict the Judgment was stayed.

*Welden and Bridgwaters Case.*

431. It was adjudged in this Case, that he who had but *Vesturam terræ*, viz. the Crop at his Lot, every 2. or 3d. year, might maintain an Action *Quare*, *Clausum fregit*.

*Ashley and Harrison's Case.*

432. Debt, the Defendant pleaded an Outlawry of the Plaintiff, at the Suit of I. S. the Plaintiff pleaded the Pardon of 31 Eliz. It was demurred to, because it was not alledged, that he was any of the persons excepted out of the Pardon; Resolved the Pardon was allowable to make any one to answer the Plaintiffs action, but not against the Queen, for she is not bound by the allowance of it.

*Sir Francis Englefields Case.*

433. The Case in effect was this, A. seised in Fee by Indenture in Consideration of Blood Covenants with B. his brother, to stand seised to the use of himself for life, and after the use of B. in tail, the remainder to the right Heirs of B. *Provided*, that if A. by himself, or by any other during his Natural life, tender to B. a Gold ring to the intent to make void the said use, that then the said uses should be void. Afterwards A. 26 Eliz. is attainted of Treason and Outlawed for it, and the King makes a Lease of the Lands to C. and D. for 40 years; The attainder is confirmed by Act of Parliament, and Enacted, That the said Act shall not extend to make any Lease void, made by the K. after the said Treason; Also Enacted, that all persons which claim an estate or interest in Land not enrolled since 18 Eliz. shall within 2. years after the Session of that Parliament, shew and bring into the Court of Exchequer his or their Grant or assurance to be void; The King reciting the *Proviso* and benefit thereof given him by Act of Parliament, authorizeth E. to deliver the Gold ring to B. to the Intent to make void the uses; he reads the Patent to B. and makes a tender to him, which he refuses

fuseth to accept of. *E.* certifies the same into the Exchequer. This Case was very largely and Learnedly Argued by all the Serjeants and others at the Barre, which *vide* in the Book at Large; afterwards, it was argued by all the Barons in the Exchequer, and there amongst other things it was Resolved by them, That the Condition in the principal Case, *viz.* the tender of the Gold ring was not annexed to the person of *A.* but that any one might make the tender; and that it was given to the King by the Act of Parliament, and when a Statute gives a Condition to the King, the performance of so, which is the substance, and which is not inseparably annexed to the person, is given to the King. 2. That the Tender and Certificate of it was good, without Office found. 3. That presently by the tender the uses were determined, and the Land vested in the King by force of the Act of Parliament.

The Earl of Northumberland's Case.

434. *A.* 15 June 22 *Eliz.* bargained and sold the Mannor of *D.* to the Earl of Northumberland and his Heirs; who because the Land was holden in Capite 3. Sept. the same year, purchased a Licence of Alienation; in *Octob.* the same year a Fine was Levied for further assurance; and in *Novemb.* the same year the Deed was enrolled; The Queen seised the Lands for a Fine for Alienation without Licence: It was adjudged, the Queens hands should be removed from the Land, because the bargainee was now in by the Fine, and not by the bargainer and sale, and also because the Licence did precede the Fine, the Alienation was not made without Licence.

Tardley and Prestwood and others Case.

435. In a *Quare Impedit*; It was holden by the Justices in this Case; That a double usurpation upon the Queen, did put her out of possession of Advowson, and put her to her Writ of Right of Advowson. But the Law hath been taken since that time, and so adjudged, that a double usurpation did not put the Queen out of possession of her Advowson; *Vide* 33 *Eliz.* *Hassits Case*, Tr. 4. *Jac.* The King and Champions Case accordingly.

Isabell Mordants Case.

436. An Infant Levied a Fine to the Queen, The Queen granted the Lands to *Bowes* Treasurer of *Barnick*. Error brought to reverse the Fine, *Bowes* pleaded in Barre the Statute of 18 *Eliz.* It was Resolved, that notwithstanding that Statute, the Writ of Error did lye, for that Statute did not extend to make grants good, of such persons who could not make grants by the Common Law, as Infants, persons of *Non sane Memorie*, &c.

*Sir Moyle Finch and Hen. Finches Case.*  
 437. The Mother of Sir Moyle Finch, and the Defendant in her Widdowhood levied a Fine to the use of her self for life, and after her death to the use of her Executors for 9. years, and after to Sir Moyle in Tail, with divers remainders over; and afterwards she married I. S. and she with I. S. granted the Terme of 5. years to Sir Moyle; and after that, she and her Husband levied a Fine to Sir Moyle and J. D. and after that the Wife with her Husbands assent made her Will, and made the Defendant her sole Executor, and dyed, the Defendant entered: It was agreed by the Justices, 1. That the use limited to the Executors was good. 2. That the Wife could not grant it in her lifetime. 3. That it was extinguishable in the Wife by a Fine *come coo, &c.* but not by a Release. 4. That the Fine *sur Consens de droit, &c.* had extinguished the Terme, and the said Fine had made such a disturbance of the possession, that the use being *future* at the instant of her death in the Executors could never rise. 5. That a Feme Covert with the assent of her Husband might make a Will, but not thereby to dispose of Legacies. 6. It was adjudged for the Plaintiff; because the Wife who had the estate for her life, had levied a fine *sur Consens de Droit, &c.*

438. Action upon *Indebitatus Assumpsit solvere*; It was Resolved the Plaintiff could not give in evidence matter of Specialty to prove his debt; but he might give in Evidence matter of Contract.

*Fitzherberts Case.*

439. He was Arrested in Execution by the Sheriff of Derby the 3. day of Feb. at 7. of the Clock in the Morning, and the same day at 10. of the Clock he was elected a Burgesse of Parliament, for the Burrough of *New Castle*; It was agreed in Parliament, because he was arrested before he was chosen Burgesse, he could not have the Priviledge of the House.

*Hunger and Freys Case.*

440. A man had recovered in Debt and had Judgment, and an *Elegit*, and had an extant delivered him, and *Nihil* as to goods. Afterwards he suggested the Defendant had more Lands, goods and chattells in the same County; and had a New *Elegit*, and upon that he had a Lease for years in Execution, and no other Land was found; It was adjudged, that the sale of the Lease for years by the Sheriff and delivery in Execution was good.

*Townsend and Walleys Case.*

441. A man had 6l. Land in possession, and Lands in Reversion upon an estate for life, and by his Will he devised all his Lands

to his Executors for 10. years to pay his Debts and perform his Will; and after the 10. years ended; that his Executors or one of them, or the Executors of his Executors, or any of them, should sell his Lands; and he made diverse Executors and gave 40 l. Legacies by his Will and dyed 30. After the 10. years 1. of the Executors sold the Land. 1. Resolved, that the Land in reversion might be sold as well as the Land in possession. 2. That the sale by the 1. Executors was a good sale by the intent of the Will. 3. Resolved, that the devise, that his Executors might sell, was a good sale within the Statute of Wills, though the words of the Statute are, That a man having Lands holden in socage, might devise two parts of it; and that by the Equity of the Statute.

*Yelverton and Yelverton's Case.*

442. A man seised of Lands, Covenanted to stand seised thereof to the use of his eldest Son, and also of all the other Land which he after should purchase; he Covenanted that he and his Heirs would stand seised to the use of his eldest Son. Afterwards he purchased Lands to him and his Heirs by bargain and sale. Adjudged, that the purchase could not be intended to other use then to him and his Heirs.

*Sir Hugh Cholmeleys Case.*

443. The Case is very long, but is this in effect, viz. Tenant in Tail, the remainder in Tail, he in the Remainder bargained and sold his Remainder to A. for the life of the Tenant in Tail, and after his death the remainder to the Queen in Fee, Tenant in Tail, in possession suffered a Common Recovery, The Queen granted her remainder to Tenant in Tail and his Heirs. Afterwards he in the remainder bargained and sold his remainder to B. the remainder to the Queen upon Condition, another Recovery was had. Tenant in Tail dyed without Issue; It was Resolved in this Case, that he in the Remainder and all Claiming under him were barred by the Recovery. 2. That the Common Recovery did bar the Tenant in Tail and the estate of A. in the remainder, although the Remainder was in the Queen. 3. That the grant of the Queen to the Tenant in Tail and his Heirs, was a good grant.

*Corbett and Marshes Case.*

444. Error brought upon a Recovery in *Dower*, because the Tenant was not summoned by 15. dayes, nor Proclamation made thereof at the Church door. Because the party had remedy against the Sheriff, the Court would not allow of the Error.

*Crispe and Fyers Case.*

445. Copyholder in Fee rendering Rent at Mich. and our Lady-day The Lord at the last instant of the day of payment demands the Rent upon the Land, and the Copyholder is not there to pay it. If it be a forfeiture; the better opinion of the Justices was, that it was a forfeiture.

*Paramour and Verwolds Case.*

446. False Imprisonment: the Defendant justified by a Recovery in Debt, in *wards de F. London*, and a Writ of Execution in *Sandwich in Kent, absque hoc*, that he was culpable in *London*; The Plaintiff said that he was culpable at *London, absque hoc*, that there is *no Recordum in Sandwich*; Adjudge the Traverse upon the Traverse was good, because the place is material.

*Parneil and Fent Case.*

447. A man seised of Lands, and possessed of a Term, devised all his Lands and Tenements to his Executors, untill they had paid all his Debts and Legacies, and levied all charges which they should expend against *J. S.* or others in Execution of his Will, and made two Executors and died; the Executors entred generally into the Land and Term, and one of them sold the Term to one man, and the other sold it to another; It was adjudged they took the Term as Executors, and not as Devisees, and yet they took the Freehold as Devisees; and they said, that the words of the Will as to the Term was no more then the Law gave, and that they should have it as Executors.

*Blackwell and Eyres case.*

448. Issue was joyned betwixt the Lessee of the Plaintiff and the Defendant in an *Ejectione firme*, which was to be tryed at the Assizes; The Defendant in consideration the Plaintiff and his Lessee should forbear to enforce their Title, and give slender evidence against the Defendants, promised to pay a certain Sum of money to the Plaintiff; Upon *Non assumpsit* it was found there were two Issues joyned in the Suit, and the Defendants hadnot joyned, but one of them had pleaded the general Issue, and the other a special Plea; It was adjudged for the Plaintiffs, because the common Speech is, the Parties have joyned issue.

*Walker and Harris Case.*

449. It was adjudged in this Case, That although Lessee for years assigns over his Term, yet Debt lyeth against himself for the Rent, by the Lessor or his year.

*Mos's and Packs Case.*

450. A Recoverie was had against the Executor of *J. D.* of debt and damages; And *Fire fac.* issued *de bonis testatoris si; & si non, damna*



*damna de bonis propriis*; the Executor dyed; the Sheriff did execution of the Goods of the Testator, before the Return of the Writ, and adjudged good.

*Portman and Willis Case.*

451. It was adjudged in the Case that by a Devise of *omnia bona*, a Lease for years did pass, if there be not other circumstances to guide the intent of the Devisor. 2. Resolved, That if a Copyholder for life or years surrender to an use, that the surrender is good, and the use void; as a surrender rendring Rent with Warranty, shall be a good Surrender, and the Rent and Warranty void.

*Beswick and Combdens Case*

452. Action upon the Case for not keeping a Bank, by reason of which the River drowned his Land; It appeared upon the evidence that it was levyed, and kept before by one who enclosed the Defendant: Yet it was adjudged that the Action did lye against the Feoffee for the continuance of it.

*Fuller and Fullers Case.*

453. The Case was; A man had four Sons, and devised his Land to his youngest Son named R. and the Heirs Males of his Body, with the Remainder successively to the other three, and the Heirs Males of their Bodies; the first Devise dyed in the life of his Father, having Issue Male; After which the Father said, *I will that my Will stand good to the Children of R. as if he had over lived me*; but the words were not put in writing. The point was, If the Children did take by the devise or by descent: *Quere.* The Court was divided in opinion.

*The Dean and Canons of St. Pauls and others Case.*

454. King Edward the Fourth by his Letters Patent granted to the Dean and Canons and their Successors, that they should be discharged of Purveyance; the Charter was confirmed by King Henry the Seventh, and also by King Henry the Eighth. The Statute of 27. H. 8. was made, That Purveyors assigned by the Kings Commis sion for provision for him, his Queen and Children, might provide all Victual, Corn, &c. as well within Liberties as without, any Grants or Allowances to the contrary. Queen Mary granted that no Purveyance should be taken of the Dean and Canons and their Successors against their Wills, notwithstanding the Statute of 27. H. 8. and Queen Elizabeth reciting all the Patents granted to the Dean and Canons, doth confirm them: It was Resolved, That the Charter granted to them was good. Wherefore that they should be discharged from all Composition for Provisions for the Queen.

*Preslon and Hinds Case.*

455. Error of a Judgment upon a Plaint in Debt in an Inferior Court was assigned, because the Defendant had not Addition : But the Judgment was affirmed, because it is not of necessity to have Addition for the Defendant in a Base Court, where Process of Outlawry doth not lie.

*Collins Case.*

456. *Audita Querela* was brought by Fraud by A. B. and C. for all Executions, being several Suits of divers persons. Adjudged it was unduly granted, and therefore a *Vacat* was made thereof upon Record, because one *Audita Querela* cannot be upon several Suits.

*Hoc and Taylors Case.*

457. The Lord of a Mannor granted by Copy to one and his Heirs *Subboſcum* in M. Wood, and G. Grove *annuatim succidendum* by four or five Acres at the least, and after made a Lease of the Mannor ; The Lessee cut down certain Wood ; the Copyholder brought Trespass, and the Lessee justified, with averment that he had left sufficient for the Copyholder to be cut by four or five Acres yearly. Resolved, First that Under-wood might be granted by Copy, if the Custome permit it. Secondly, That the whole Wood passed, and the word *annuatim succidendi*, to be an order only appointed for the cutting of it, not to restrain the Grant.

*Yelding and Feyes Case.*

458. The custom of a Parish was, That the Parson had used to keep within the Parish a common Bull and Boar for the increase of the Parishioners Chattel, and the Defendant being Parson, had not kept them for four years together, for which the Plaintiff brought action upon the Case : the Defendant by Protestation there was no such Custom, pleaded *Not guilty* : It was adjudged a good Custom, and that the Action did lie, and the Plea of *Not guilty*, not good, the offence being in *non seifance* of a thing, and the Protestation not good against the Custom.

*Morgan and Wyes Case.*

459. In Trover and Conversion ; The Plaintiff put in exception that the Sheriff was his Cosen, and prayed a *Venire* to the Coroners, which issued accordingly, and at the *Nisi prius*, the *Tales de circumstantibus* was awarded and found for the Plaintiff and Judgment, and upon Error brought, this was assigned for Error, and it was adjudged Error ; and the Judgment reversed.

*Downhall and Catesbyes Case.*

360. In a Formedon in the remainder, the Case was : A. seized in Fee, gave Instructions to one to make his Will in writing, and to give the Land to his Son for Life, who put the Will in writing

ing, and therein writ the Estate to be in Fee ; It was Resolved, that the Will was void, being contrary to the intent of the Devisor.

*Evington and Brimstons Case.*

461. A man left his Gates open *ad nocumentum Inhabitantium*, for which he was amerced in the Leet, and his Chattel distreined for the amercement ; he brought Trespass : It was adjudged, That it was an Offence not amerceable in a Leet, and the Distress unlawful, and the action well brought.

*Eaton's Case.*

462. Debt upon an Obligation : The Condition was : If the Obligor and his Wife, sell the Wives Land, then if the Obligor during his Life purchase to the Wife and her Heirs so much Land, and of that value as that which should be sold, or else shall leave to his Wife so much money or money worth after his death to her own use, that then, &c. The Defendant pleaded the Wife was dead ; the Plaintiff said the Husband and Wife had aliened the Land, and the Husband had not purchased so much other Lands to the Wife and her Heirs : It was adjudged against the Plaintiff, because the Condition was for the ben. fit of the Obligor, and gave him Election either to purchase Land or leave money, of which Election he is prevented by the death of the Wife which is the act of God, and so discharged of one part of the Condition, and then the whole Condition and Obligation are both discharged.

*Thyn and Cholmly's Case.*

463. A Lease for years was rendring Rent at Mich. and our Lady, with a *Nomine pæne* of 3 s. 4. d. the Lessee assigned the Term ; adjudged that the Assignee was chargeable with the *Nomine pæne* incurred after the Assignment, not before.

*Carter and Loves Case.*

464. The Case was : A Termor devised his Term to J. S. who made his Wife his Executor, and died ; the Wife entred and proves the Will, and afterwards took Husband, and the Husband takes a Lease of the Lessor, afterwards the Devisee entred and granted his Estate to the Husband and Wife. 1. If by this acceptance of the new Lease by the Husband, the Term which the Wife had to the use of another, viz. the Testator should be determined : Resolved, It was clear, it was a surrender. 2. When the Devisee entred into the Term devised to him without the assent of the Executor, and after grants his right and Interest to the Executor, if the Grant be good, because he hath not any Term in him, but only a Right of the Term suspended in the Land. It was holden to be a good Grant, and that it shall have a protection to enure by way of Grant, to pass the Estate of the Devised to the Executor.

*Dell and Higdons Case.*

465. It was Resolved in this Case, That the admittance of Tenant for Life of a Copyhold, is the admittance of him in the Remainder, because the Fine is entire, and no more Fine is due by him in the Remainder, but otherwise it is of him in the Reversion.  
2. Resolved, That the surrender of a Copyhold in Tail is not a Discontinuance, but a common Recovery without Voucher is a Discontinuance.

*Sams and Pitts Case.*

466. Assumpsit: The Plaintiff and Defendant, controversies being betwixt them submitted themselves to Arbitrament; and the Plaintiff in consideration of 6 *d.* given him by the Defendant promised to pay 200 *l.* to the Defendant, if he did not perform the Arbitrament. The Defendant also assumed to the Plaintiff in consideration of 6 *d.* given to him by the Plaintiff, that if he did not perform the Arbitrament, that he would pay to the Plaintiff 200 *l.* upon request, and alledged in Fact, that an Arbitrament was made, that the Defendant should be bound to the Plaintiff, that the Plaintiff and his Wife should have and enjoy the Land in question, without the Let or hindrance of him, his Wife, or *c.* their Son and Heir, and that the Plaintiff had performed all on his part, yet the Defendant did not become bound to the Plaintiff as, *&c.* nor paid the 200 *l.* though requested; and because it was not expressed in what Sum the Defendant should become bound to the Plaintiff, and because the De-Accord is, that the Defendant be bound for Annoyance without Let of the Son of the Defendant, which was a Stranger to the Arbitrament: It was adjudged against the Plaintiff, and that the Arbitrament as to that part was void.

*Darley and Woods Case.*

467. In an Action brought, the Defendant alledged a Custom of a Copyhold to be demised in Fee, Tail, or for Life; and made Title by a Demise in Fee to himself; the Plaintiff traversed the Custom, and the Custom was found to demise in Fee, or for Life, but not in Tail; It was adjudged that the Issue was found for the Defendant, because the substance was found for him, and the tail was but Inducement.

*Ever and Heydons Case.*

468. A. seised of three Houses, and other Lands, Pastures and Meadows in W. in the County of H. and of Land in the County of D. devised in this manner, viz. *I give my Capital Messuage in the County of O. and all other my Lands and Meadows, and Pastures in the Parish of W. That the Houses passed by the Devise, for that Land comprehends Houses.*

## The Bishop of Worcester's Case.

469. The Bishop presented a Felon at the Sessions at Newgate, who had stolen a Bason and Ewer from him, for which the person was attainted, and a Writ of Restitution awarded to the Bishop: In Bar of the Restitution, a Scrivener of London, a Freeman came and said, That every Shop in London is a Market overt, and that he bought the Bason and Ewer in his Shop, being a Scriveners Shop: Adjudged, the sale of it in the Scriveners shop did not alter the propriety of the Plate, for it was not a Market overt for such things: And it was said, That any Shop in London by custom was a Market overt for the buying of all things: It was Resolved, that such a Custom was an unreasonable Custome.

## The Lord Norths Case.

470. Christ Church in Oxon is incorporated by the Name of Dean and Chapter *Ecclesia Cathedralis Christi de Oxon*: and they made a Lease by the name of Dean and Chapter *Ecclesia Cathedralis Christi in Academia de Oxon*; and the Liberties de *Accademia* did extend further then the Liberties of the City; yet it was adjudged a good Lease because the substance of the Corporation was inserted in the words of the Lease.

## Bullen and Bullens Case.

471. The case was; S. B. being *Cestuy que use* before the Statute 27. H. 8. devised to his Wife certain Lands for her Life, and that after her decease, R. B. his eldest Son shall have the Land 10 l. under the sum or price it cost, and if he died without Issue, F. D. his Second Son, should have the Land 10. l. under the price it cost; and if he died without Issue of his Body, then his two Daughters A. and E. shall have the Land paying the value thereof to the Executors of his Wife. The Question was if R. B. the Devisee had an Estate Tail or not; It was argued it was an Estate tail, and it was compared to *Frenchams case*, 2. Elz. *Dyer*. where a man devised Lands to his Wife for use, the Remainder to C. F. and the Heirs Males of his Body, and if he die without Heirs of his Body, the Remainder over, and it was clearly taken; that the general Limitation, if he die without Heirs of his Body, shall not alter the especial Tail: On the other side it was said that the Estate was Fee-simple, for that the words are, That he shall have the Land 10 l. under the price, and so the word (paying) implies a Fee-simple. The Court inclined to be of opinion, It should be a Fee-simple; But the Case was not Resolved, but Adjourned.

*Germin and Ascoets Case.*

472. *A.* seized of Lands in Fee devised the same to his eldest Son, and the Heirs males of his body, the remainder to his second Son, and the Heirs males, the like remainder to his third Son; the remainder to his Daughter in Tail, with remainder over; *Proviso*, That if any of the Devisees or their Issues shall go about to alien, discontinue and incumber the premises, that then and from the time they shall go about to alien, discontinue, &c. their estate shall cease as if they were naturally dead; and from thenceforth it should be Lawfull for him in the next remainder to enter, and hold for the life of him who shall so alien, &c. and presently after his death the Land shall go to his Issue; the Devisor dyeth, the eldest Son and all the other but the second Son levy a Fine, the second Son claimes the said Land by the Devisor: It was Resolved in this Case by all the Justices, that the *Proviso* of ceasing of the estates upon an attempt to alien or upon an Alienation, was repugnant to the estate Tail, and that remainder which was limited to the second Son upon such attempt, was void in Law.

*St. Johns Case.*

473. *A. Capias ad satisfaciend.* was directed to the Sheriff, who made a Warrant to a special Bayliff to execute it, who arrested the party after a new Sheriff was elected, but had not received his Writ of discharge; adjudged the Writ was executed well; but otherwise if the party had been arrested upon the Warrant, after his Writ of discharge was delivered.

*Godwin and Ishams Case.*

474. Error of a Judgment in debt upon an Oblation to perform Covenant in an Indenture; The Covenant was, *That if the Plaintiff pay the Defendant 100 l. at Mich. then the Defendant would pay him 10 l. yearly after, during his life; and it was alledged, that the Defendant did not pay him the 10 l. yearly, but did not mention the payment of the 100 l. by him, which was assigned for Error: It was adjudged No Error; because the Defendant by pleading Conditions performed which he did plead, had confessed the payment of the 100 l. to him by the Plaintiff. The Judgement was affirmed.*

*Woodliffe and Vaughans Case.*

475. Words, viz. *He hath forsworne himself, and I will prove him perjured, or else I will pay his charges:* Adjudged the words are actionable notwithstanding the Disjunctive, or *else I will pay his charges.*

*Barton and Lever and Brownloes Case.*

476. Tenant in tail, upon a Recovery had, came in as Vouchee; It

It was Resolved that in such Case, he had barred his Issue from any Writ of Error, to reverse the Fine, and it was said, That it was adjudged Mich. 32 Eliz. in *Carringtons Case*, That if Tenant in Tail levyeth an Erronious Fine, and afterwards levyeth another Fine, the Issue in Tail was barred of his Writ of Error, upon the first Fine.

*Rolls and Germins Case.*

477. It was Resolved in this Case; where the Testator retained an Attorney of the Common Pleas, to prosecute a Suite in that Court; That an Action will lye for his Fees which be due to him in that Suit against the Executor of the Testator, because the Testator in such Case could not wage his Law; but for monies expended in Suites in other Courts by the Attorney, the Action will not lye.

*Welcombs Case.*

478. Debt brought to answer to *Tho. Welcomb*, Executor of *Joh. Welcomb*; The Judgment was, *Quod predict. Johis recuperet*; where it should have been, *Quod predict. Tho. recuperet*. Resolved, it was not amendable, because no default in the Judgment is amendable, being the Act of the Judges, and not of the Clerks.

479. The Bargainee Covenanted, That if the Bargainor paid a certain sum of money at a certain day and place, that the Bargainee and his Heirs would stand seised of the Land to the use of the Bargainor and his Heirs, and entred Recognizance to performe the Covenants. The Bargainor paid the money before the day, at another place, and after day tendred a deed to be sealed by the bargainee, containing the receipt of the money and also a Release of all his right in the Land; the Bargainee refused to Seal it: The Court doubted if by the Refusal the Recognizance was forfeited, because he was not bound to Seal the Deed, not being pertinent to the Assurance of the Land; But the Court conceived, that the acceptance of the money before the day, was sufficient to excuse the forfeiture of the Recognizance.

*Issans Case.*

480. Three Women and the Husband of one of them recovered Debt in C. B. the Record was removed by Error in B. R. where the Judgment was affirmed; the Husband dyed: The Women sued forth a *Capias* against the party: without first suing a *seire facias*; It was adjudged, that there ought to have been a *seire facias* first sued forth, because the Defendant perhaps had a Release of the Husband who was dead to plead.

*Morgan and Williams Case.*

481. An Administrator brought debt, and declared, That Administration was Committed to him by *A. B. jace Theologie prae fifforem*, and doth not say *loci illius Ordinarius*, and for that cause the Judgment was reversed.

*Sheffield and Rises Case.*

482. *Assumpsit*, In consideration that the Plaintiff had submitted himself to the Arbitrament of *I. S.* the Defendant *ad tunc & ibidem assumpsit*; It was said the Action did not lye, because it was upon a Consideration executed; But adjudged for the Plaintiff, because the words *ad tunc & ibidem*, extend to the time of the *Assumpsit*.

*Sir John Perrot's Case.*

483. In Intuition against the Lady Dorothy Perrot and James Perrot, the Case though very long, was thus in effect; Sir John Perrot 26 Eliz. before his Attainder seised of diverse Mannors by Indenture tripartite, Reciting that whereas he had 2. Sons, viz. *F.* and *W.* by diverse venters, for Love and affection which he bore to his said 2. Sons, and such other Issue male as should be of his body, and for the Love which he bore to *I.* his repured Son; and other Considerations, Covenanted that he his Heirs and Assigns, and all other persons who had Interest in the said Mannors, should stand seised thereof to the use of himself for life, without impeachment of Wast, and after to the use of *W.* for life, and after to the use of the first Son of the said first Son for life, and after to the use of all the Sons and Issues male of the said *W.* by his first Wife, which he should Marry, one after the other, in such Course and forme as they successively ought to descend by due course of Law, for the terme of the lives of the said Sons and Issues males; and for want of such Issue, Then he limited the remainder in use to *F.* for life, and after to his first Son for life, and so further as the same was limited to *W.* and for want of such Issue to *I.* and for want of all such Issue, the remainder to himself and his Heirs and Assignes: There was a *Proviso*, for the making of Joyntures to the Sonnes Wife; *Proviso*, That Sir John, by any Writing signed and sealed with his hand and seal, might revoke, alter, change, any use estate or limitation in the said tripartite Indenture, that then the said Sir John and all other seised, and all assurances aforesaid should be of such estate, or in such manner, as by such Revocation, enlargement or limitation should be declared; *W.* dyed without Issue male, Sir John Perrot afterwards 35 Eliz. by writing under his hand and seal, did limit the Lady Dorothy his Wife the Defendant for her Joynture a third part of the Mannors in 3. equal parts to be divided: 36 Eliz. *T.* dyed seised in possession, and Dorothy entered and took



took the 3d. part of the profits of the said Mannor, and averred the Feoffment was by writing, with and under the proper hand of Sir John and traversed the Intrusion, upon which it was demurred; There were many points in this Case, both upon the pleading and matter in Law. 1. If all the estates perpetually limited in Freehold for life to all the Sons were void; or which of them were good, which void. 2. If Sir John in making of the Feoffment had duly pursued the Authority limited to him by the *Proviso*. 3. If Sir John, in the Assignment of the Joynture to Dorothy his Wife, which is the principal title by which she Justifies, had duly pursued the Authority limited to him by the other *Proviso* for making of Joyntures. The Case was very Learnedly oftentimes argued at large, and Ty. 38 *Eliz.* It was adjudged for the Queen against the Defendants, not upon the matters in Law, but upon a poynt of pleading only; For it was said by the Barons, that they did not take plea sufficient, that he did enfeoffe such person *Habend.* to them and their Heirs to the uses in the Indentures, unlesse it had been pleaded the Feoffment was by writing, or so averred to be, which shall not be intended so to be without special pleading, or averment of it.

*King and Hunts Case.*

484. Tenant in Tail enfeoffed his Son of full age, and afterwards disseised and levied a Fine with Proclamation; before the last Proclamation, the Son entred and made a Feoffment, the Father and Son dyed, the Feoffee made a Lease for years to a stranger and dyed seised; The Issue in Tail brought a *Formedon*, and recovered by faint pleader: It was adjudged in this case, because it appeared by the plea That the Fine was levied to the Lessee for years himself, and not averred it was to other uses, the Terme was extinct, and so he could not falsifie the Recovery.

*East and Hardings Case.*

485. Note, It was adjudged by the whole Court in this Case. That if a Copyholder cut down Trees without a Custome, it is a forfeiture, unlesse it be for Reparations.

*Barwicks Case.*

486. Intrusion, the Case was: That the Queen made a Lease to Barwick of a Mannor for 21. years, he surrendered the same to the Queen, Anno 13. and the Queen in Consideration of the surrender, granted him the Mannor *a die Consecrationis* of the Patent for the life of I. S. and the Lessee *pur autre vie*, devysed the same to him for 40. years, and averred the life of I. S. The Plaintiff said, That after the Lease made by the Queen to him for 21. years, that he granted all his estate in a part of the Mannor to a stranger, and

and afterwards in Consideration of the surrender, the Queen made the Lease *per auter uye*. Resolved the 2d. Lease made by the Queen was void, because all in the first Lease was not surrendered, and so the Queen was deceived in her grant. 2ly. That the Patent a *die consecutionis* for life was void. 3. Resolved, That the Lessee for years could not be an Occupant against the Queen.

*Banks and Heshones Case.*

487. A Recovery and Judgment was in a base Court in a Plaint in *detinue* of 4l. of mony, the Judgment was Reversed, because that Action, nor a Replevin doth not lye of mony.

*Hawle and Vaughans Case.*

488. In a Writ of Entry in the *Quibus* brought in *Wales*, the Defendant pleaded *Non disseissin*, pendant which plea, the general pardon 35 *Elix* was made by which all Fines, Amercements and Contracts were produced; It was Objected, the Defendant ought to have been Amerced, because the general pardon did not discharge the Amercement. Resolved, the Original Cause of the Amercement was the Tort, and contempt that he did not render the Land to the demandant, and the Original Cause being pardoned, the Amercement which is the Consequent of it is pardoned.

*Oland and Burdwicks Case.*

489. A Woman who had her Widdowes estate of Copyhold Land sowed the Land, and before severance took Husband; The Lord took the Emblements; and adjudged Lawfull, because the estate of the Woman determined by her own Act.

*Shart, Tucker and others Case.*

490. In Replevin, the Defendants avowed as Bayliffs of the Queen for an Amercement, and then one of them dyed; Adjudged the sure should not abate.

*Harbin and Bartons Case.*

491. Two Joynt tenants in Fee, one made a Lease for years to begin after his decease, and dyed. Resolved, it was a good Lease against the survivor. *Vide Sharpner and Hardenbams Case*, adjudged in the Dutchy Chamber accordingly.

*Gramminham and Ewres Case.*

492. The Condition of an Obligation was, whereas the Obligee is bound in certain Obligations, the Obligor is to deliver them to the Obligee before *Mich.* or else, if the Obligor seal an acquittance to the Obligee, such as the Council of the Oblige. shall devise, then the Obligation to be void. Resolved, that the first part of the Condition was a Condition; the 2d. part of it gave an Election

Election to the Obligor; but if there be not any such devise of Acquittance, yet the Obligor is to performe the first part; if there be such devise of an Acquittance, the Obligor hath his election; but if the Countel devise no Acquittance, it is no discharge of the whole Condition.

*Casselman and Hobbs Case.*

493. Words, viz. *Thou hast stolen half an Acre of Corn* (innuendo *Corn severed*) adjudged the words not actionable. But if he had said, *he had stolen so many Loads or Bushels*, there the innuendo shall be intended *Corn severed*.

*Wilson and Patemans Case.*

494. The next of blood sued to repeal Letters of Administration granted to a stranger, pendant which the stranger sold the goods, and afterwards the Administration was Repealed and granted to the Plaintiff; It was Resolved, that in this Action the Defendant was not Chargeable, though he Converted the goods (The Action was Trover and Conversion) and the sale good for any thing appeareth in the Case.

*Wallors Case.*

495. Debt against Executor, who pleaded fully administered; the case was, the Wife of the Defendant was made Executrix, and she by fraud to deceive the Creditors made a gift of the goods before her marriage with the Defendant, and yet she kept them, and took Husband the Defendant and dyed, and the Husband had in his hands so much of the goods as were sufficient to pay the Creditors; It was adjudged against the Defendant, because he had confessed himself Executor by his plea of fully Administered, and the property of the goods did not passe from the Wife by the grant, she same being by fraud.

*Richardson and Yardleys Case.*

496. A man devised Lands to his Wife for life, and after to his Son, and if he shall dye without Issue, to the Child which his Wife goeth with, she being great with Child, and its issue in Tail; And if my Wife dye and my children without Issue of my children living, then Land to remain to I. S. and his Wife, and after their death to the their Children: The point was, if I. S. had an estate Tail, or an estate for life, the remainder in Tail to his Children; The Court was divided in opinion, but the better opinion seemed to be, that he had an estate Tail. *Quere.*

*Reynolds and Claysons Case.*

497. Debt upon Obligation of 60 l. The Case was, it was agreed between the Plaintiff and Defendant 14 December, that the Plaintiff should lend the Defendant 30 l. to be repayed the first of

*June*

June following, and that the Plaintiff should have 3/4 for the forbearance, if the Plaintiffs Son should be then living, and if he died, then to repay but 26. l. of the principal money. It was Resolved, that it was an Usurious contract within the Statute of 13. Eliz. of Usury.

*Ross and Arundells Case.*

498. In *Ejectione firme*, the case was: A. seised of Lands, made a Lease to J. S. *Habendum* to him and his Assignes for his own Life, and for the lives of two of his Sons; the Lessee made a Lease at Will and died, he in the Reversion entred upon the Tenants at Will. Resolved, It was a good Lease for three Lives against the Lessor, and if the Lessee made an Assignment of it, it shall be good for the three Lives, but if he do not, the Occupant shall have it for the two Lives, after the death of the Lessee himself.

*Wrights Case.*

499. *Quare Impedit*: It was Resolved in this Case, That if a Church become void by Cession, viz. by making the Incumbent Bishop, that the Queen shall have the Presentation and not the Patron.

*Hide and the Dean and Canons of Windsors Case.*

500. Covenant: The case was Lessee for years covenanted *Reparare & sustentare domus, &c. ad omnia tempora necessaria durante Termine*, and did not covenant for him and Assignes: Upon Issue joyned it was found for the Plaintiff; Error brought, because the Issue is *non permisit esse de casu*, and the Covenant is *Reparare*; The Court held it no Error, because *non reparare* is all one with *permittere esse in decasu*. It was Resolved, that the Covenant did lie against the Assignee, though Assignees were not named in it, because it was a Covenant inherent to the Land.

*Marshall and Vincent's Case.*

501. In a *Scire facias* against the Bail, he pleaded that the Plaintiff had arrested the party who was condemned in Execution in the Starinay Court, so as he could not render his Body: Adjudged, no Plea, because he might remove his Body with a *Corpus cum causa*, and so bring him into this Court.

*Sawyer and Hardys Case.*

502. A Lease was made to a Widow for 40. years, upon this Condition, *Si tantu vixerit vidua, & inhabitaret supra premissa*: She died within the Term being a Widow: Adjudged the Term was not determined, but should go to her Executors; Otherwise if the Lease is made for 40. years, if she shall so long live a Widow; And so note there is a difference between a Limitation and conditional words.

Harris and Vandergies Case.

503. Resolved in this case that an Administrator shall have Trespass *de bonis asportatis in vita* of the Inteste, by the enquiry of the Statute of 4. E. 3.

Dudley and Knights Case.

504. In Debt; The Issue was if the Plaintiff *habuit gavisus fuit et possidebat*, the Office of Bedelry of the Court of Conscience of the Bishop of London, it was found *occupavit Officium predictum*. It was said that *occupavit* did not amount to *Gavisus fuit vel habuit*, but the Court held it good enough.

Lassels and Lassells Case.

505. Action upon the case by the Father against the Son, for those words spoken by him of his Father, *viz. My Brother hath stolen a Black Mare, and you were privy to it, and sent her away to the Fens to my Brothers House*: Adjudged the words were slanderous, being spoken of a Justice of Peace.

Jenkinson and Wrays Case.

506. Words, *viz. John Jenkinson*, meaning the Plaintiff, *deserveth to have his Ears nailed to the Pillory*; Adjudged the words are actionable, being spoken of an Attorney.

Bale and Rodes Case.

507. Words, *viz. There is a Villain now broken into my Mothers house, to rob my Mother, and is in the house*, innuendo the Plaintiff. The Court doubted if the innuendo did reduce the words to be spoken of the Plaintiff.

Barbers Case.

508. Words, *viz. The Plaintiff hath bin in prison for stealing M. Pigons horse*; Qu. If the Action lieth because he doth say that he had stole the Horse.

Atkinsons Case.

509. After a Recovery of Detinue, the Defendant upon the *Disstringas* pleaded, that after the Judgment he had delivered the Goods to the Plaintiff: Adjudged no Plea, without being returned by the Sheriff, or without a Deed shewing it.

Pen and Glovers Case.

510. Lessee for years of a Mannor, covenanted that he nor his Assigns would molest, vex, or put out any Tenant from his Tenancy, upon payment of forfeiture. A breach was assigned, that the Lessee entered upon the possession of A. a Tenance of the Mannor, and beat, and wounded, and troubled the said A. for his Tenement. It was adjudged no breach without an Ouster, or disturbing him of the profits of it.

Case

*Carth and Reades Case.*

§ 11. A Lease was made of certain Fenny Grounds in the County of Cambridge, the Lessee covenanted to drain certain other Lands in the said County not in the Lease; and in Covenant brought, he pleaded that the Lessor had entred upon the Land let: Adjudged no Plea, because the Covenant was collateral, and not for doing any thing inherent to the Land let.

*Besey and Hungersfords Case.*

§ 12. The *Venue fac.* was returned the first day of the Term, and the Roll gave day before the Term, and Issue was joyned and tried upon it. The Court said the Roll is the Warrant for the Writ: The Court held the Writ issued without Warrant, and the same was not aided by the Statute of 18 Eliz. for that that Statute aids only Discontinuance, Miscontinuance, and Misconveying of parties.

*Ap Richard and Pemy; Case.*

§ 13. In a *Quod ei Desorceat in Wales*, in the Nature of a Writ of right, Issue was joyned and tried upon the meer Right: The Defendant upon Non-suit was barred by Judgment, and a new *Quod ei desorceat* brought, and the first Judgment pleaded in Bar; It was adjudged a good Bar, and Judgment final given; It was the opinion of the Justices, in Error brought and assigned that final Judgment should not be given upon the Demurrer, That this Judgment was good, and the Judgment was affirmed.

*Gawen and Ludlows Case.*

§ 14. Note. It was Resolved in this case, That if in a Replevin the Defendant claims property, the Plaintiff may have a Writ *de proprietate probanda*, althought it be two or three years after, because by the claime of the property, the first Suit is determined.

*Wilford and Musshams Case.*

§ 15. A constitution in London is, That an Apothecary who sells unwholsome Drugs, should forfeit a certain pain: The Defendant sold unwholsome Drugs in London, for which the Chamberlain of London brought Debt in London for the pain; Adjudged maintainable there, by their By-laws and Customs.

*Wild and Copemans Case.*

§ 16. Words, *viz.* Thou art a forsworn man, for thou wert forsworn in the Leet. Adjudged the words actionable, because a Leet is a Court of Record.

*Brough and Taylors Case.*

§ 17. The Queen made a Lease rendring Rent, with condition if the Rent was behind by the space of 40. days, that the Lease should cease; the Rent was payable at the receipt of the Exchequer:

terwards the Queen granted the Reversion : It was adjudged that in this case, the Grantee ought to demand the Rent upon the Lands and not at the Receipt of the Exchequer, for that the Grant had altered the place of payment.

*Belchamber and Saunges Case.*

518. Debt was recovered against the Defendant by another, who sued Execution, and the Plaintiff was Sheriff and had the Defendant in Execution, and he escaped, and the Sheriff paid the condemnation, and brought an Action against the Defendant, who pleaded, that the Goaler licensed him to escape ; Adjudged no Plea.

*Beckford and Parnetts Case.*

519. A man seised of Lands in *A.* had Issue four Daughters, viz. *A. B. C.* and *D.* and devised all his Lands in *A.* to *A.* and *B.* his two Daughters, and made them his Executors : Afterwards he purchased other Lands in *A.* a Stranger was desirous to purchase those Lands which he had new purchased ; and he said, *That the Land should go with the residue of his Lands to his Executors.* Afterwards, the Testator made a Codicill, and caused it to be annexed to his Will, but in the Codicill no mention was made of this Land ; and if the new purchased Land should pass by the Will, without a new publication of this Land, was the Question : Resolved, the Land newly purchased should not pass ; for, notwithstanding that the reading of the Will, and making a new Codicill may amount to a new publication, yet it doth not manifest the intent of the Devisor that more shall pass, then that which he intended at the first ; and the reading of the Will, and making a new Codicill, may not be termed a new publication, without an express publication for the Land newly purchased, therefore the Land shall not pass by it.

*Ascue and Hollingsbrooks Case.*

520. The case was, *A.* acknowledged a Statute Merchant at *Lincoln*, before the Mayor there, to which Statute there wanted the Seal appointed by the Statute of *Acton Burnell* ; wherefore the Conusee brought Debt upon it in *Co. B.* and had Judgment ; Error was brought, and the Judgment was reversed, because it was not an Obligation, for it shall not be taken to be an Obligation, without express proof of the delivery of it as an Obligation. 2. Because three were bound jointly in it, and the Action was brought against one of them only, and so the Writ did abate upon the Plaintiffs own suing.

*Stowde and Willis Case.*

521. Debt upon an Obligation : The Condition was, If the Obligor shall pay the Rent of 37 *l.* yearly at two Feasts, according to the intent of certain Articles of Agreement made between the Obligor and Obligee, during the Term, that then, &c. The Defendant pleaded

pleaded the Articles did contain, That the Obligor Dimisit & ad formam tradidit to the Defendant omnia talia domus, tenementa & terras in Parochia de Y. in quibus the Obligee had an Estate for Life by Copy, according to the custom of the Mannor; Habendum for 21. years, if the Obligee should so long live, rendering to the Obligee during the Term 37. l. to be paid at the Castle of C. and further pleaded, That at the time of the making of the Articles, the Obligee had not any Estate in any Lands, Houses, &c. in Y. for term of Life by Copy, upon which Plea the Plaintiff demurred. There were two points in the case. 1. If nothing passed by the Articles, and so the Reservation of the Rent is void. 2. If the Obligation for payment of the Rent was void. It was Resolved upon the first point, That no Rent is reserved, for the Lease did never begin; and therefore the Rent should not. For the second point the Court differed in opinion: Fenner Justice, held the Condition of the Bond is to pay the Rent according to the Articles, which is, That if the Lessee have not the Land, the Lessor shall not have the Rent. Papham cont. That the Obligor is bound to pay it, although nothing was dimisited to him, for that by the Bond he hath made it a Sum in gross, and it is altered from the nature of a Rent, and he is bound to pay the Rent or Sum, and if this be either of them, he must pay it. Q<sup>u</sup>. There is no Judgment in the Case upon that point.

*Also and Claydons case.*

512. Assumpsit; That the Defendant upon good consideration promised to pay the Plaintiff 5 l. when he should be required: The Jury found that the Defendant promised to pay, but found no Request; wherefore it was adjudged against the Plaintiff.

*Perin and Corbets Case.*

513. In an Appeal, the Defendant was acquitted of the Murder; and found guilty of Man-slaughter: It was agreed in that case, that the Plaintiff could not be Nonsuit.

*Brown and Brinckleys Case.*

514. The Plaintiff declared that he was produced for a Witness: the Defendant said he was disproved before the Justices of Assize, by the Oath of K. innuendo that he was disproved in his Oath: Adjudged that the Action did not lie, for the innuendo cannot supply such intendment.

*Adderby and Boninbyes Case.*

515. Assumpsit: in consideration the Plaintiff would be Bail for one F. in a Plaint that Adderby had brought in London against F. the Defendant did promise to save the Plaintiff harmless touching the Bail, and shewed a Recovery was against F. and 2. Cap. returned



turned *non est inventus*, upon which Process issued against the Bail, who paid the money, and the Defendant had not saved him harmless. It was found upon *Non assumpsit*, the first Action was entred by the name of *Adderby*, and the Bail accordingly, and that the Declaration was by the name of *Adderley*: It was adjudged, that although the Jury found the *Assumpsit*, yet the special matter proves the Plaintiff had no cause of Action, for he was not damnified by reason of the Bail, at the Suit of *Adderby*, for which the *Assumpsit* was, but he was wrongfully taken if he was Bail for *Adderley*, against whom the Recovery was had; whereas in truth he was not Bail for him; wherefore it was judged against the Plaintiff.

*Austin and Twins Case.*

526. The Patronages of two Churches adjoining within one mile, were belonging to one Parson, and both being void and of the value of 7 l. in the Queens Books, the Ordinary made an union of them, at the request of the Patron, which was afterwards confirmed by the Patron and the Queen. *Qu.* If a good union:

*Tusking and Edmonds Case.*

527. A Lease was made of Tythes rendring Rent at a place out of the Parish, with clause to be void upon *non* payment. Adjudged, the Lessor is to make his demand of the Rent at the place, and for not payment the Lease is void:

*Broughton and Mulshoes Case.*

528. False Imprisonment: The Defendant justified that he was Constable, and the Plaintiff being in the presence of a Justice of Peace, not having opportunity to examine him, commanded he Defendant to take the Plaintiff into his custody till the next day, which he did accordingly. It was adjudged a good Justification, though not alledged what cause the Justice had to imprison the Plaintiff.

*Megs and Griffins Case.*

529. Words; viz. *J. S.* told me that he heard say, *That thou didst poyson thy first Husband, and that he died of that poyson*, with an averment that *J. S.* near told the Defendant so. Yet adjudged, that neither words, nor the averment of them, were sufficient to maintain the Action.

*Brokes Case.*

530. Words spoken of a Merchant, viz. *He is a false man, and I will prove it, and he keepeth a false Debt-book, for he charged me with a Piece of three Piled Velvet, which I never had.* Adjudged, the Action did not lie without saying, *That by dissuasion of Customers of other, they did not deal with him, nor that they would not trust him.*

The

The Lord de la Ware and Pavlets Case.

531. Words Spoken of the Plaintiff in open Sessions, viz. *You have perverted Justice, and to your shame and dishonour I will prove it*; adjudged the words actionable.

Weekes and Taylors Case.

532. Words, viz. *he hath laid in wait to rob, and was one of them that wou'd have robbed me*; adjudged actionable, though he was not robbed.

Carter's Case.

533. Words, viz. *Carter is a proging, pilfiring Merchant, and hath pilfired away my corn from my wife and my Servants, and this I will stand to*; adjudged the words ere not actionable.

Bowyer and Jenkins Case.

534. Action upon the case for words spoken at B. in the County of S. the Defendant justified that he spake the words at C. at a Tryal there, being produced as a Witnesse by Subpœna and sworn: The Plaintiff said, *de injuria sua propria*, and found for the Plaintiff, and because the venire was from B. whereas it ought to have been from C. where the Justification was; It was adjudged Error.

Penniman and Rawbanks Case.

535. Action for standing his Title, That the Plaintiff was seised of Land and put it to sale; and the Defendant said, *I wish not any man to deal with the Land, for I know one that hath a good Title to it, and the parties will not depart with their interest for any reason*. The Defendant Justified, that he had a Lease in Reversion of it, and at will of other part. It was replied, *de injuria sua propria*, and found for the Plaintiff: Resolved by the Justices, If one saith he hath Title or Interest to anothers Land, an action doth not lye although he hath no Title; but when he saith that another hath Title, he cannot save the same by applying the same to himself for his Justification.

Shaw and Thompsons Case.

536. A Woman recovered Dower of a Copyhold within the Mannor, and 40 l. damages, because her Husband dyed seised; and she brought Debt for the damages in B. R. adjudged it did not lye, because the Court Baron could not hold plea, nor award Execution of 40 l. damages, although the damages were there well assessed.

Huntbage and Shepheards Case.

537. The Issue in an *Eject one firme* was, if *Jemet* the Wife of the Defendant was alive at the time; The Jury found *Julian*, the Wife of the Defendant was alive; It was the opinion of the Ju-

stices, they cannot be intended one person, without finding that by the Custom of the Country, Women baptized by the name of *Judas*, had been called *Jemet*.

*Stile and Butts Case.*

538. Trespass for carrying away Clay, the Defendant Justified by a Prescription as a Tenant of the Mannor, but because the Clay was digged by another, and not by the Tenant, the Justification was ruled not to be good.

*Doggerell and Poley's Case.*

539. Covenant upon an Apprentiship, the Defendant pleaded a *By-law* in London where he was Apprentice by the Common Council, That if any Freeman takes to Apprentice the Son of an Alien, the Bonds and Covenants should be void; It was adjudged no plea, for that the Common Council cannot make the Bonds and Covenants void, but may Impose a Fine upon the Master for taking such an Apprentice.

*Baband Clerks Case.*

540. False Imprisonment; the Defendat Justified, That the Borough of *St. Albans* had authority by Charter to make *By-laws*, and they made a *By-law*, That if any Burgesses give opprobrious words to the Major, he should be Imprisoned of the Major at his pleasure; and that he being Major, sent an Officer to the Defendant being a Burgess, to come to the Common Hall for the affairs of the Town; and he sent him this Answer, *Let the Major come to me if he will, for I will not come to him.* Adjudged, the Justification was not good, that the *By-law* was not Lawfull, and that the words were not opprobrious words.

*Reynold and Purchowes Case.*

541. *Assumpsit*, where the Plaintiff had recovered 4 *l.* against the Defendant in Consideration the Plaintiff had given him 3 *l.* he promised to acknowledge satisfaction, and had not done it. It was said it was no Consideration to pay that to him which is due; The Court held the Consideration good, because speedy payment will excuse and prevent travail and expense of Suit.

*Gregory and Blaisfields Case.*

542. Error of a Judgment in *Ludlow* upon the Statute of 4 and 5 *Mar.* for weaving of wollen Cloathes; It was assigned, that the Statute of 5 *Eli.* had abrogated that Statute; The Court said, the Statute of 5 *Eli.* had not abrogated, it but encreased the penalty; But because the Suit was there by Bill or plaint, but ought not to be but by Writ or Information, the Judgment there was Erroneous.

§43. The Custome of a Mannor was layed to be, That if a Copyholder hath 2. Sons and a Wife, and dyes, and the eldest Son hath Issue and dyeth in the life of the Wife, the younger Son shall have the Land. The Issue being upon the Custome, The Jury found the Custome, That the younger Son shall have the Land unlesse the eldest was admitted in his life, and paid the Lords Fine; The Court held the verdict to be insufficient to prove the Issue.

*Walter and Dawes Case.*

§44. *Assumpsit* upon a promise to pay 10 l. yearly for 10. years to the Testator of the Plaintiff, in consideration the Testator had granted him the Office of the Clerk of the Fines in the Countie of B. & C. and Glamorgan; The Defendant pleaded he did not exercise the said Office, and the *Venue* was awarded in the County of Worcester; It was adjudged against the Plaintiff, because there they cannot take Notice of the Issue.

*Nelson and the Wardens of Wexchandlers Case.*

§45. The Plaintiff sued a Prohibition against the Defendant, upon Libell exhibited by them for a Legacy given to them by the Testator of the Plaintiff; The Plaintiff surmised, that there were divers Obligations for monies depending and Suits; But in Conclusion the Defendants had a Consultation, upon security to repay the Legacies to be there recovered by them, if any things were Recovered by the Executors upon the Obligations. *Vide* this case more largely Reported in Cr. 3. part 467.

*Wright and Major and Commonalty of Wickhams Case.*

§46. Error was brought to reverse a Fine, viz, that the Ancestor dyed mean between the Teste and the Return of the Writ of Covenant; The Defendant pleaded, that after the death of the Father the Plaintiff entred into parcell of the Land and made a Feoffment; It was the opinion of the Court, that he was barred by his entry and Feoffment of part upon the difference. If a man hath an Action to Land, if he suspend or extinguish it in part, it is extinct in the whole; but if he hath right to Land, he may Release or suspend it in part, and remain good for the Residue; and upon this point the Judgment was reversed.

*Wellbes Case.*

§47. Note, It is the same case, with the case of *Alloxwood*, Reported at Large in Cook 1. p. of his Reports, upon the points there more largely debated and adjudged; and therefore I have forborn here to abridge it. I shall mention this case put by *Purriam* Justice, viz. If Tenant in tail be the remainder in tail, the remainder to the Queen, and Tenant in tail commits Treason, and the Queen makes

makes a Lease; and the Tenant in tail dyeth without Issue, and afterwards he in the Remainder dyeth without Issue; that this Lease shall continue good upon the Reversion.

Lord Darcies Case.

548. *Quo Warranto*, for using a liberty to be exempt of Purveyance, The Defendant pleaded that King Edward 4 granted to the Dean and Canons of St. Pauls; and their successors, the said liberty within all their Lands, and averres, that they were seised of the Land in which at the time of the Grant, and that afterwards the said Lands came to Edw. 6. who granted the same to his Grandfather and his Heirs, with a Clause *de tanta, talia, & consimilia libertates, &c. quæ, quot, qualia, & quanta*, the Dean and Canons or their predecessors ever had, by reason of any Charter Grant of any of the Progenitors of the said King, with a general *non obstante aliquo Statuto, &c.* It was Replied that 27 H. 8. it was enacted by Parliament, that the Kings Purveyors should execute their Commission in all places aswell within Liberties as without, any Charter, &c. notwithstanding. The Court was of opinion for the Queen, because at the time of the Grant of *tot, tanta, & talia libertates*, the liberty of Exemption was extinct by the Act of Parliament, and the Kings intent was not to grant such a Liberty as was extinct; and as to the *non obstante*, it was not sufficient being general; but if the Grant, or *non obstante* had been particular, there the Grant should have been good.

Matthew and Woods Case.

449. Judgment was given in B. R. in an Action upon the case for words; the Plaintiff there brought another Action in C. B. for the same words and had Judgment to recover; Error was brought upon the Judgment in B. R. the Court was of opinion to confirme the Judgment in B. R. but they in discretion would not grant execution upon it, but only upon the Judgment in their own Court.

Thimbleborps Case.

550. Words, *viz. when wilt thou bring home my Husbands sheep which thou hast stolen?* adjudged actionable, and the damages to be paid by the Husband.

Hill and Constables Case.

551. Words spoken of the Plaintiff a Justice of Peace and Vice President of York, *viz. He is a blood-sucker, and thirsteth after blood; but if any man will give him a couple of Capons or a score of Weathers, he will take them;* It was adjudged the words were not Actionable, because he may thirst for blood in care of Justice.

*Wheeler and Collyers Case.*

552. Assumpsit against an Administrator ; whereas the Intestate was in his life indebted to him 17 l. in consideration the Plaintiff would deliver to the Administrator 6. barrells of Beere, he promised to pay the whole 20 l. being found for the Plaintiff. Judgment was stayed because the action did not lye joyn't, for two sums of money.

*Colmans Case.*

553. In consideration of 4 d. one promised to pay 10 l. upon non Assumpsit, Damage shall be given to 10 l. and not to 4 d. adjudged.

*Amder and Nokes Case.*

554. Lease for years assigned over his Terme by deed to I. S. and Covenanted that I. S. and his assignes should enjoy the Land during the Terme without Interruption of any. After I. S. assigned over his Terme by word, and the Assignee being disturbed, brought Covenant, adjudged it did lye, although the Assignment was but by word, because there was privity of estate.

*Paramoure and Darings Case.*

555. The Condition of an Obligation was to pay all Legacies which I. S. had bequeathed by his Will ; Adjudged, the Defendant shall be estopped to say I. S. made no Will ; but he may plead, he gave not any Legacies by his Will.

*Greene and Buxhyns Case.*

556. The Statute of 31 H. 8. gave all Colledges dissolved to the Crown, in which there is a Clause, that the King and his Patentees should hold discharged of Tythes as the Abbots held : Afterwards the Statute of 1 Edw. 6. gave all Colledges to the Crown, but there is in it no Clause of Discharge of Tythes ; The Parson Libelled in the spiritual Court ; and the Farmor of the Lands of the Colledge of Maidston in Kent brought a Prohibition upon the Statute of 31 H. 8. The Court was clear of opinion, that the King had the Lands of the Colledge by the Statute of 1 E. 6. and not by the Statute of 31 H. 8. But the Justices doubted, the Lands comming to the King by that Statute, whether they should be discharged of Tythes by the Statute of 31 H. 8. there being no Clause in the Statute of 1 Edw. 6. for discharge of Tythes ; but it was Resolved by the Justices, that unity without Composition or Prescription was a sufficient discharge of Tythes by the Statute of 31 H. 8.

557. Action upon the case, for that the Defendant made a Conigree in his own Lands ; and that the Conies entred into the Plaintiffs Land and destroyed his Corne ; Resolved, that the Action

on did not lye; because they were not the Defendants Conies when they were out of his Warren; But in that case, it was holden, that the Erection of a Conigree, or a Dove Cote was presentable in a Leet and finable there.

558. Note, Resolved in the Court of Common Pleas, by the Justices there, That an Information doth not lye upon the Statute for Tanning of Leather, but only in the Courts of Record at *Westminster*; and not in any other Inferior Courts.

*The Queen and Husses Case.*

559. Tenant in Tail of an Advowson, the reversion to the King in 32 H. 8. granted it to the King and his Heirs, the King granted the Advowson to the party presented, Tenant in Tail dyed without Issue, the Church became void; Resolved that the Advowson did passe out of the Kings Reversion, after the estate Tail was determined, and that a *Quare Impedit* brought by the Queen did not lye. But in this case, it was Resolved, That a double presentation would not put the Queen out of possession, if she had had Right.

*Newill and Barringtons Case.*

560. After Issue joyned in an *Ejectione firme*, and the Jury at the barre ready to try the Issue; A Writ was brought to the Justices not to proceed *Regina inconsulta*, in the Nature of Aide, and after great debate, the same was allowed by the Court; *Vide* aide in personal actions, 2 R. 313.

*Fendor and Plasketts Case.*

561. It was Resolved in this case, That if the Husband distrain for Rent due to the Wife *dum sola fuit*, and Rescous be made, he alone may have a Writ of Rescous, or at his Election joyned his Wife with him in the Writ.

562. A Rescous was returned without shewing the place where Rescous was, and the party was discharged.

*Hinson and Baradges Case.*

563. If the Jury challenge the Sheriff and the challenge be confessed, although the Jury be removed, and a new Sheriff chosen; Yet Resolved, The proces shall go to the Coroners.

564. It was Resolved in this case, that *Ejectione firme* doth not lye *de peca terra*.

*Hollman and Collins Case.*

565. A Judgment in the Court of *Plimouth* was reversed, because the stile of the Court was *Placita coram I. Majori, &c.* and did not say, *secundum Consuetudinem villæ, nec per litteras Patentes, &c.*

Kelsick

*Kelsick and Nicholson's Case.*

366. Two Executors were, and one of them gave the Obligation to a Stranger for the payment of his own Debt, and died; The survivor brought Detinue. It was adjudged the Action did not lie.

*Sewel and Garrets Case.*

367. A devise was made to the Son, and if he die without Issue, or before his age of 21 years, it shall remain to another; the Son had Issue but dyed before 21. years: Adjudged the Son should have the Land, and not he in the Remainder, and in that Case (On) was construed for (Et.)

*Buckler and Hartys Case.*

368. The case is very long, but this in effect; Tenant for Life, the Remainder in Fee; Tenant for life made a Lease for years, the Lessee entred. Tenant for Life granted the Tenements to C. *Habendum*, the Tenements from the Feast of *Mich* following for Life, the Lessee for years attornes, C. enters and makes a Lease at Will, to whom the Tenant for Life levied a Fine *Come Ceo*, &c. he in the Remainder entred: In this Case it was Resolved, first that the Grant to C. was void, for that an Estate of Freehold cannot begin at a day to come. 2. That the Grant being void at the beginning, the attornment afterwards cannot make it good. 3. When C. entred by color of the Grant, he was a Disseisor. 4. If the Fine had been levied to the Disseisor himself, he who had the right to the Remainder, might have entred for the forfeiture. 5. That the Fine levied to the Tenant at Will was a forfeiture, and he in the Remainder entering upon it, had purged the Disseisin. 6. It was Resolved in this case, that if the Disseisor levieth a Fine to a Stranger, the Disseisor shall retain the Land for ever, for that the Disseisor against his own Fine cannot claim, but by the Fine, the Right is extinct of which the Disseisor shall take advantage

*Abraham and Twiggs Case.*

369. A seised of Land in Fee, by his Will in writing devised 40. L. annuity to J. S. for Life, with clause of distress payable at *Mich.* and our *Lady-day*, and died. The Rent was behind at our *Lady-day*, 35 *Eliz.* J. S. distrained; a Replevin was brought, and the Plaintiff in the Replevin said, That before A. was seised, that B. was seised in Fee, and enfeofed divers persons to the use of himself and the Heirs of his Body, the Remainder to the use of G. *Et heredum masculinorum suorum legitime procreatorum, & pro defectu talis exitus, ad usum J. D. et heredum masculinorum suorum legitime procreat. & pro defectu talis exitus ad opus & usum rest. hered. dicti G. in perpetuum.* B. died without Issue; G. had Issue A. the Devisor: The principal point in the Case was, If the Limitation to the use



use of G. and his Heirs Males lawfully begotten, and for want of such Issue, *ut supra*, without the words *Heirs Males of his Body*, was an Estate tail, or a Fee-simple in G. for if tail, then the Devisor his his Son was seised in tail, and his Will of the Rent void : It was Resolved he was seised in Fee-simple, and not in tail, for default of the words, *Heirs of his body in the limitation of the use.*

*Wrights Case.*

570. In a Prohibition in this case, it was holden by the Court, that the Bishop of *Winchester* might prescribe that he and his Predecessors, Farmers and Tenants of Temporal Lands, had held their Lands discharged from the payment of Tythes, and so might any other spiritual person ; but Temporal persons could not prescribe in *non Decimando*, but in *modo Decimando*, they might prescribe.

*Messh and Curties Case.*

571. *Ejectione firme* ; The case was, A seised in Fee, let a Messuage, and 20. acres of Land for years rendering Rent, Provided the Lessee shall not parcel out any of the Lands from the House. The Lessee devised the house and 10. acres for half a year, reserving the other 10. acres ; the Lessor at the next day accepted of the Rent, and notwithstanding entred upon the Land, the Lease not being expired. It was Resolved, That the words in the Proviso, were a condition, 2. That the condition was broken by the Devise of the House, with parcell of the Land, as well as if he had devised the whole Land : But some of the Justices were of opinion, that the acceptance of the Rent after the condition was broken, had dispensed with the condition, and had barred them of his entry for the condition broken, especially if the Lessor had notice of the Condition broken at the time of the acceptance of the Rent. *Quare.*

*The Lord Norriss and Barretts Case.*

572. Debt for an Amercement in a Leet ; The case was, The Abbot of A. was seised of the Hundred of H. in Com. B. and of Leet appendant to it, to be holden by prescription once in the year at *Easter*. The Dissolution of the Abby was found, and that the Towns of C. and N. with 20. other Towns were in the Hundred : King Edward the Sixth granted to L. divers Lands in N. which was parcel of the possessions of the Abby, and also granted to him *Omnes & omnimodas Curias, Leetas, Perquisitiones & proficua Curiarum & Leetarum, fines, amerciamenta in N. seu in eorum aliqua, seu alieni inde parcella modo spectant, sive pertinent.* With a further Clause that L. and his heirs should have *tot talia tanta hujusmodi & consimilia, curias, Leetas, fines, amerciament, quacunque prout Abbas, &c. Infra Messuagia terras, tenementa & cetera premissa & quamlibet inde parcellam.* Afterwards Ed. 6. granted the Hundred and the Leet to I. B. and I. D. which

which by mean conveyances came to the Plaintiff. L. conveyed the Land to his second Son, under whom the Defendant claims. It was the opinion of the Justices, That L. had not any Leet by the Grant nor any Amercement, nor was discharged from the general Leet, because the first clause of the Patent is restrained to Leets and Amercements, belonging or appertaining to the Land granted; and the Leet which the Abbot and King had, was appertaining to the Hundred, and not to Land. 2. That L. could not have the like Leet as the Abbot: for when *eadem* may be had, and the Plaintiff hath words to have *eadem*, if he fail of *eadem*, he shall not have *Consimile*, for *eadem* remains in the King, and if the King hath a Leet, none other can have a Leet in the same place, because two Leets cannot be in one place *simul & semel*.

*Laughton and Gardiners Case.*

573. In Action upon the Case; Upon a Larit the Sheriff returned a *Cepi & habeo Corpus paratum*, which he had not, and the Defendant did demur to it: Adjudged the Action did lie, because by his demur the Defendant hath confessed his false Return; but if he had pleaded the Statute of 23. H. 6. and shewed he had taken Bail, the Action would not lie.

*Nicholas and Badgers Case.*

574. The Defendant in an Action upon the case for words by his Council gave in evidence, That one J. S. had stolen certain Sheep, and that by compart betwixt the Plaintiff and J. S. the Plaintiff did take a Lease of J. S. in D. to help him to cloak, and to keep him from the Felony; and that he said, He would affirm all to be true that the Council had said. It was adjudged that for these words a new Action did lie; for although they do not accuse him as an accessory to the Felony but for misprision of Felony, which is not Fineable; yet it is a great scandal of any man to say, That he cloaks Felony: Note in this Case; It was Resolved that an Action upon the Case, doth not lie against a Counsellor for delivering slanderous words in evidence.

*Bonham and Springs Case.*

575. *Assumpsit* in London; The Defendant pleaded a Concord in another County, for all Matters in any County except London, *absque hoc*, that he promised in London; the Plaintiff said he promised in London, *absque hoc*, that there is any such Accord, although this was a Traverse upon a Traverse, yet it was adjudged good.

*Montagne and Jeoffries Case.*

A seised in Fee of the Mannor of M. and of Lands called G. expectant upon a Lease for yeas, by his Will he devised the Mannor and G. to the Defendant, and afterwards he covenanted with J. S.

to

to make a Feoffment to the use of himself, and *E.* the daughter of *J. S.* whom he did intend to marry, which was by Letter of Attorney, executed in the Mannor, not in *G.* nor any Atonement of the Tenant of it. He married *E.* and afterwards in the Will with his own hand, where he had made *M.* his Daughter his Executor, he added these words, viz. *E. my Wife*, and then died. It was the opinion of the Justices in this case, that the Feoffment did countermand the whole Will; but they doubted whether the writing of the new words in the Will was a new publication of it.

*The Lady Greshams Case.*

577. *Scire facias* to execute a Recognizance acknowledged in Chancery; accordingly *B.* the Defendant pleaded in abatement of it; that *B.* was seised of three Acres, at the time of the Recognizance whereof *J. S.* was now seised, not named in the Writ; they were at Issue upon the Seisin, and it was found that *B.* and another were jointly seised and enfeoffed *I. S.* It was said that although the moyetic of the Land was extendable, yet the Writ as brought should abate.

*Corbet and Downings Case.*

578. An Obligation was taken by the Sheriff for an appearance at *Westminster*; and the Term was adjourned to *St. Albans*, and the party appeared there; adjudged he had not forfeited his Obligation: *Qu.* If the word *Westminster* in the condition, did not make the Bond void, because by the Statute of 22. H. 6. there is not any such name in the Writ.

*Blodwell and Edwards Case.*

579. The case was; *B.* made a Feoffment in Fee to the use of himself for Life, and after to the use of such Issue of the Body of *M.* from eldest to eldest, as were reputed to be begotten by the said *B.* whether it be lawfull or unlawful. It was adjudged in this case, That it was a good Remainder, limited to a Bastard; for a Son in reputation, is sufficient to make him a Purchaser.

580. It was Resolved by the Justices, that Fenny ground drained, should pay Tythes, and was not barren Land within the Statute to be discharged of Tythes for seven years.

*Mounson and Wests Case.*

581. In Assise: The parties were at Issue upon the Seisin and Disseisin; the Jury found *West* Tenant, and that he disseised the Demandant; *Nisi* such words in a Will give the Tenant a Title: It was said the Verdict was imperfect, because of the words, *nisi, &c.* but the Court held the Verdict good enough; for the finding of the Disseisin, implies a Seisin also.

*Walsford and Mossums Case.*

582. Resolved that an Alien borne under the Obedience of an Enemy of the King, may have Debt upon an Obligation for personal things.

*Palmer and Porters Case.*

583. Action upon the case against the Bailiff of N. for that upon a *fieri fac.* directed to the Sheriff of N. return *Ostob. Mich.* he sent his Warrant to the Defendant being Bailiff of N. to execute it, who returned *Nulla bona, &c.* before *Mich.* and at *Mich.* they were removed from their Office, and new Chosen: Resolved, it was a void Return; for the Sheriff ought not before *Ostob. Mich.* have accepted return of *Nulla bona*, for he might have some afterwards, and before the return of the Writ, and the return by them after *Mich.* being out of their Office was void; but if they had executed the Writ before *Mich.* then the Sheriff might have accepted of their return before *Mich.* but not after.

*Hoby and Tadcastles Case.*

584. *Audita querela*; the case was, A. sued a Bill of Debt against B. who found bail the Plaintiff and another: Afterwards B. was was condemned and dyed without paying the consideration or rendering his body. A. *scire fac.* was sued against the Plaintiff his Bail and upon 2. *Nihil* returned Execution was awarded against him; Whereupon he brought the *Audita querela*: It was prayed he might be discharged out of Execution, for that it is now become impossible by the act of God, the principal should render his body, and there was never any *Capias* awarded against him in his life time. The Court held it very unreasonable to sue Execution against the bail, till a fault was returned in the principal and the Recognisance of the bail is, that the principal shall render himself, which is to be intended upon *Capias* awarded against him: Judgment was given for the Plaintiff in the *Audita querela*, and he was discharged out of Execution.

*Slade and Morleys Case.*

585. A man sowed his Land with Corne, and sold the Corne to the Defendant for 16 l. to be paid at Midfomer next; and the Defendant in consideration of such sale promised to pay the money at Midfomer, but did not; upon which *Assumpsit* was brought; It was the greater opinion of the Justices in the Exchequer Chamber, that the Action did not lye, because properly Debt did lye, in which the Defendant might wage his Law.

Robins, Gerrard and Princes Case.

586. The Case very long, in effect was this: A man is Admitted, Instituted and Inducted into a Benefice with Cure of the value of 8*l.* and afterwards the King presents him to the Church of *D.* which is a Benefice with Cure, and he is admitted and Instituted. The Archbishop grants to him Letters of Dispensation for plurality, which Letter the King confirms, and afterwards he is Inducted to the Church of *D.* It was adjudged in this case, that the Dispensation came too late, because it came after the Institution; for by the Institution the Church is full against all persons, but against the King, and as to the Spiritualities he is full Parson by the Institution. 2. Resolved, that admit the Church was not void by the Institution untill Induction: Yet the Dispensation came too late, for that the words of the Statute of 21 *H. 8.* of Pluralities are ( *may purchase Licence to receive and keep two Benefices with Cure of Souls,* ) and the words of Dispensation in this case, were *recipere & retinere*, and because by the Institution the Church was full; he could not purchase Licence to receive that which he had before, and he cannot retaine that which he cannot receive.

The Queen and Cattons Case.

587. *Scire fac.* to repeal a Patent made 29 *Jan.* 35 *Eliz.* which Recited, Whereas *A.* and *B.* *conjunctim & divisim* were bound by Obligation to the Queen in a 1000 *l.* dated 21 *April* 33 *Eliz.* with Condition that *A.* should stand to the award of *I. S.* for controversies betwixt him and *C.* which Obligation is become forfeited, and Recites that the Queen by *Pat.* 30. *Jan.* 33 *Eliz.* had granted to *C.* and his Wife, the said Writing Obligation and sum of 1000 *l.* in the same contained; *ita ut præfertur forisfact.* and that at the suit of *C.* in the Name of the Queen Judgment was given, that the Queen should have Execution of 1000 *l.* *prout per Recordum Judicii, &c.* Now to the intent that *C.* should have the said Obligation, The Queen *ex certa scientia, &c.* granted *prædict.* *Scriptum Oblig. & summam* 1000 *l.* *& totum advantagium Judicii prædict.* to the said *C.* and his Wife with power to sue in her Name; It was Resolved in this case, that the Queen was deceived in her grant, because she recites she had granted before the Obligation by her *Pat.* 33 *Eliz.* whereas in truth nothing passed by that Patent for want of true Recital of the Condition.

Turner and Oldfields Case.

588. A Prohibition to the Admiralty, because they Libelled in the Admiral Court upon a Charterparty to have the third part of goods taken upon the Sea by Letters of *Mart.* whereas the matter

was tryable upon the Land, and not in the Admiralty by reason of the Indenture of Charterparty.

*Lutterells Case.*

589. It was Resolved by the Justices in this Case; If one be seised of Lands to which another hath right of Entry, and the Tenant in possession levys a Fine with Proclamation; That he who hath right ought to enter in possession, or make a special Warrant to one to enter for him, and a stranger cannot enter in his name and avoid the Fine.

*Gybon and Bowyers Case.*

590. Upon Recovery an *Ejectione firme* in the Court of Ancient Demesne, a Writ de *Executivie Judicii* was awarded to the suitors, who returned they did not execute the Writ, because the Land was Frank Fee, as appeared to them by the Transcript of a Fine shewed to them; the Return was disallowed by the Court, because the parties allowed the Jurisdiction of the Court at first, and that the Lands in Frank Fee ought to have been pleaded, so as the other party might answer to them.

*Vicary and Farthings Case.*

691. The Issue was upon full age, and 2 Church bookes were given in evidence, whereof one was delivered to the Jury in Court, the other was delivered to the Jury by the solicitor of one of the parties without the Assent of the other; and that was endorsed upon the Postea: The Court was divided in opinion if the verdict was good or not.

*Wentworth and Russells Case.*

592. Two Tenants in Common of a Mannor brought a *Parces fractio*, and it was adjudged maintainable, without shewing how they were Tenants in Common.

*Maine and Sedis Case.*

593. A man made a Lease for years by Indenture, and Covenanted with the Lessee upon surrender of his Lease, to make to him during the Terme a new Lease. The Lessor accepted of a Fine *sur Conusans dedit come ceo*, and by that Fine rendred the Land to the Conussee for 80. years; It was adjudged, that the Lessor had disabled himself to make the Lease, and therefore the condition was broken, and Covenant did lye without a Surrender.

*Partridge and Nayses Case.*

594. Judgment was against 3. persons in an Action brought against them upon the Statute of 1. and 2. *Phil.* and *Ma.* for Impounding a distresse in several Pounds, and damages assessed which

were trebled by the Court, and 3 *l.* apiece forfeitures; because there ought to have been but one *£* 1 forfeiture, because all the 3. Defendants offended in a joynt offence.

*Holins and Conards Case.*

595. Debt upon Obligation to performe Covenants; which was, That the Obligor should make assurance before such a day of Land to the Obligee and his Wife at the Costs of the Obligee; but there was no request in the Covenant: It was adjudged that in this Case, that the Obligor having election what manner of Assurance he will make, ought first to give notice to the Obligee, that he would make such an Assurance, and then the Obligee is to pay the Costs of it.

*Monday and Levices Case.*

596. In a Prohibition, it was adjudged, it was not a good prescription, that Inhabitants have used to pay Calves and Lambs, and 1 *d.* for every Milch Cow in satisfaction of all Tythes of Lambs, Calves, Milch Kine, and all barren and rother beasts, and Agistments.

*Linch and Spencers Case.*

597. *Ejectione firme*, the Case was, Sir R. B. was seised of Lands in Fee, and thereof enfeofed W. and others upon condition, that that they should regrant it to him and his Wife in Tail, the remainder to the right Heirs of Sir R. B. who regranting it accordingly, Sir Robert and his Wife had Issue A. B. Sir Robert dyed, A. B. levied a Fine with Proclamation to Sir G. B. the Lessor to him and his Heirs, to the use of him and his Heirs; The Mother afterwards let the Land to the Defendant for life and dyed. Sir G. B. entred upon the Defendant, pretending his entry to be Lawfull by the Statute of 11 H. 7. It was Resolved, 1. That Sir G. B. was such a person who might enter for the forfeiture within the Statute, and that by this Fine Levied by A. B. in the life of his Mother, the estate Tail is barred thereby; and the remainder in Fee passed by that Fine to Sir G. B. so as he had the remainder at the time of the discontinuance made and the wronges done to him, and then he is within the words and intent of the Statute to take advantage of the forfeiture.

*The Countesse of Northumberlands Case.*

598. In a *Quare Impedit* brought by divers the Defendant pleaded the Release of one of them depending the Writ. It was Resolved, 1. That it should go in Bar against him only. 2. Resolved, That a presentment alleged in the grantee of the next Avoydance, and not in the grantor himself, was a good title for the grantor and his Heirs in a *Quare Impedit*.

*Harvey and Oswalds Case.*

599. A man let Land rendring rent upon Condition, that the Lessee should not demyle it without the assent of the Lessor; he demysed part of it, the Lessor without Notice accepted the whole rent of the first Lessee; It was adjudged he might enter for the condition broken notwithstanding the acceptance, because he had not notice of the condition broken; *contra* if he had notice of it, although the condition was Collateral.

*Blinco and Marsons Case.*

600. A Vicar Libelled in the Spiritual Court, to have Tythes of the gleab of the Parson, and a prohibition was granted, for that the gleab shall pay no Tythes.

*Kirton and Hoptons Case.*

601. In Appeal of *Mayhem*, the Defendant pleaded to the Writ, and pleaded over to the *Mayhem*: It was adjudged, that he ought not to plead over to the *Mayhem* but only where life is in Jeopardy; wherefore a *venire* was to try the Issue of Notguilty.

*Coote and Lighworths Case.*

602. False Imprisonment; the Defendant had justified, that he had a Warrant to arrest *I. D.* and he demanded of the Plaintiff what was his Name? he answered his name was *I. D.* therefore he arrested him; adjudged for the Plaintiff, for that the Defendant at his peril ought to take notice of the party.

*Sharpe and Swaines Case.*

603. A Feoffment was made of a house and Land which was within the View of the house, and the deed of Feoffment was delivered in the house only: It was adjudged no Livery for the Land; *Popham* Chief Justice said, it was not good for the house.

*Barkby and Foster's Case.*

604. A man brought *Assumpsit* in B. R. and declared, whereas 15. December at the request of the Defendant, he delivered to the Defendant 100 *l.* to the use of the Defendants Father; the Defendant promised, to repay it to the Plaintiff *ad vel ante* the first of May following. The Defendant pleaded the Plaintiff had brought an Account against him for the same money, and declared the money to be delivered 10 December, and prayed Judgment of the Action pendant; the Account upon Error brought the Judgment was affirmed, because damages are recoverable in this Action, but not in an Account.

*Blomfield and Withes Case.*

605. Debt against 2, one was taken in Execution, and suffered



to escape by the Goaler. It was adjudged, that Execution might be sued out against the other.

606. Judgment; a Writ of Entry was reversed because the Name of the Summoners were not endorsed upon the Writ.

*Arkinghall and Denny's Case.*

607. An Archdeacon having a Parsonage appertaining to his Archdeaconry before the Statute of 13 *Eliz.* made a Lease for 40. years of the Parsonage which was confirmed after the Statute; Adjudged the Lease and confirmation were both good.

*Harrington and Wyes Case.*

608. *A.* made Articles betwixt him and 2. others, by which it is Covenanted by the said *A.* that the said *A.* doth let, &c. and the said *A.* doth covenant to make a Lease for 21. years according to these Articles. Provided, that they shall pay to the said *A.* yearly 28 *l.* Resolved, that it was a present Lease, and a Reservation of Rent, and that the Rent should be paid during the Terme.

*Parlor and Butlers Case.*

609. Prohibition; the case was, the Plaintiff was Convented before the High Commissioners for saying of the Defendant a Minister; That he was fitter to stand in the Pillary then to preach in a Pulpit, and that he had taken 2. Orders already, and that he lacked but taking the third, which was to have his Ears cut off; He there Justified the words; that the Defendant had forged an Acquittance and shewed it. The Commissioners would not allow of the Justification, but granted him to aske the Defendant Forgiveness; the Prohibition was granted, because they ought not to meddle with the Cause.

*Easton and Newmans Case.*

610. If a man find goods; and being demanded of him, he denies for to restore them; It was adjudged to be a Conversion of them.

*Randals Case.*

611. An Infant confessed a Judgment in the Kings Bench in Debt; It was Resolved, that he could not have *Audita Querela* during his Nonage to reverse the Judgment in that Court; but he might have Error in the Exchequer Chamber, by the Statute of 27 *Eliz.* to reverse it.

*Shepherd and Metcalfes Case.*

612. A Prohibition by 3. Resolved, one Nonsuit or Retraxit shall not bar the others.

*Holcome and Rawlins Case.*

613. If a Disseisor make a Lease for years, and the Disseisee reenters; It was Resolved, that the Disseisee after his reentry shall punish the Lessee for Trespas, for the mean profits during his Occupation, although he be in by Title; but before his reentry, he shall not punish him.

*Gooses Case.*

614. Appeal of death against Principal and Accessaries before the fact, and of accessaries after the fact; The principal is found not guilty of the Murder, but guilty of Manslaughter: Resolved, all accessaries before the fact should be discharged; because to a Manslaughter none can be accessory before the fact.

*Perries Case.*

615. An Infant of the age of 9. years was admitted by his Guardian to sue an Appeal *de morte fratris*.

616. A Writ of Error was delivered at the Instant the Judgment was given; the Court would not allow of it, because it was procured before the Judgment was given.

617. *Nota per Curiam*, A Copyholder may prescribe by *usitatum est* against his Lord, but against a stranger he must prescribe in the name of the Lord.

*Ford and Glanvilles Case.*

618. Administration is committed *durante minore etate* of an Infant, and Debt is brought against him; and then the Infant comes of age. *Quere*, if the Writ shall abate.

*Roberts and Agmondeshams Case.*

619. A Lease was made of a Rectory, a Parson was presented to it, and upon a supposition, that he was holden out with force, had a *vi laica removenda*, upon which the Sheriff returned *non invenimus vim laicam, nec potentiam armatam*; Notwithstanding which Return upon Affidavit, that he was kept out with force, a Writ of Restitution was awarded out of the Kings Bench.

*Woodlifes Case.*

620. Accompt for goods delivered to a Factor to Merchandize; he pleaded he was robbed of the goods, and of divers other goods and Chattells of his own, and holden a good plea.

*Bradshaws Case.*

621. A man prescribes for Common Appendant: Resolved, unity extincts it, but not Common for arable Land.

*Hallswel and Fervoise.*

622. A Parson sues before the Ordinary for Tythes, and then he Appeals to the Audience, where the sentence is affirmed; Then the parties Appeal to the Delegates, and there both sentences are

repealed; It was agreed, that such a condition *ad revivendum* the Sentences may issue forth, but then such a Reviewing shall be final without further Appeal; but if the Commissioners do not proceed to the Examination according to the Common Law, they shall be restrained by a Prohibition.

*Mortimer and Windgates.*

623. Accompt for Malt; the Defendant said, the Plaintiff brought *Trover* and *Conversion* for this and other Malt, and for part found for him, and for part not, and demanded Judgment of the Action; adjudged no bar; for it may be he did not convert the Malt, yet he ought to accompt for it.

*Smith and Bowfals Case. Vide the same*

Case 912. *Plito* 610. before *Bradshaws Case*, the very same with this Case.

*Rogers and Jacksons Case.*

624. Debt upon a Bond, the Defendant pleaded the Statute of usury, alledging that *agreatum fuit*, that the Plaintiff should have so much money *pro donatione diei solutionis*: the Plaintiff traversed *absque hoc quod agreatum fuit*, and found for the Plaintiff; It was said in stay of Judgment, the word *Corrupte* was not pleaded in the Bar; It was Resolved the Bar was made good by the Replication; and the Declaration being good, It is sufficient for Judgment for the Plaintiff.

*Bacon and Hills Case.*

625. *Ejectione firme*; the case was, A. had Issue 3. Sons, viz. B. C. and D. and devised to B. and C. certain parcells of Land; and to D. the Lands in question, without mentioning of any estate, after the death of his Wife, and paying 10 l. a peece to his daughter when they enter; and if any of the Sons marry and have Issue male of their bodies, and dyeth before his entry in the Land, then that issue to have his part; D. takes a Wife, and hath Issue male in the life of the Devisor, and the Wife of the Devisor dyeth, and he enters and pays the portion of 10 l. a year to the Daughters, and after dyes; B. the eldest brother enters upon the Issue male of D. It was adjudged in this case, That D. had but an estate for life, and not in Tail; for there were three things precedent to the Tail, the Marriage, the having Issue male, his death before his entry, and when it appeareth he did not dye before his entry, therefore he had no Tail, and by the word paying 10 l. to the Daughters, he had not a Fee simple, but that is intended to be for the estate which he had.

*Grey and Willoughbyes Case.*

626. The *Venue* bore date in *December* which was out of Terme, but

but retornable at a day in the next Terme, and the Issue upon distresse was afterwards tryed; It was held, the same was but a misconveying of proces, which was helped by the Statute of *Jeofailes*; but if the Agard upon the Roll had been had at a day out of the Terme, then the Court held the same to be Error.

*Tiping and Bunnings Case.*

627. Note, It was adjudged, that if a Copyhold be granted for life, the remainder to another in Fee, the admittance of the Tenant for life is the admittance of him in the Remainder; because the Lord is not to have a new Fine upon the death of the Tenant for life.

*Cbeney and Hawes Case.*

628. *Assumpsit* to deliver to the Plaintiff in London certain monies, when he delivers to the Defendant certain broad Cloathes there; the Defendant pleaded *Non Assumpsit*; The opinion of the Court was, that the Defendant ought to have said by way of Answer, that the *Assumpsit* was special, have traversed the general *Assumpsit* in the Declaration.

*Stowels Case.*

629. If there be two Joynt Tenants, and one sole brings Trespas against a stranger, who pleads Notguilty: Resolved, the defendant cannot give in evidence the Joynt Tenancy, but he ought to have pleaded it.

*Core and Hadgills Case.*

630. After Execution awarded *superfedeas* issued *quia improvidè emanavit executio*, but no cause of Restitution was in the *superfedeas*, for which it was said that Execution was done before the *superfedeas* awarded. The Court awarded a *non superfedeas* with a clause of Restitution in it.

*Coles Case.*

631. He was Indicted of Burglary, the Indictment was *quod burglarit' domum cujusdam Richardi fregit*, without naming his Sirname, and the Judgment holden good.

*Saundleys and Oliffs Case.*

632. A man was seiled of a Messuage, and granted the Messuage with all Commons appurtenant, and in Trespas the Defendant did prescribe for Common, and did aver that all the Farmors of the said Messuage in the place where, &c. and because it did appear, that there was unity of possession of the Messuage and Land in which the Common was claimed, the Common was extinct; but if the grant had been all Commons usually occupied with the Messuage, it would have passed the like Common, and so it was adjudged.

*Lewes and Bennets Case.*

933. The next Avoydance was granted to 2. the one Released to the other who brought a *Quere impedit* in his own name; It was adjudged maintainable, because it was before the Church was void.

*Dover and Strafields Case.*

634. King H. 7. gave Land in Tail to I. S. his Issue was disseised; a stranger being in possession levied a Fine with Proclamation, and 5 years passed, the Reversion remaining in the Crown; It was holden, that the Issue of him was only bound in whose time the Fine was Levied, and no other Issues, and that by the Statute of 32 and 34 H. 8.

635. Action upon the case, because for money he sold to him Tythes, *sciens* that he had not any right in them; Adjudged the Action did lye by the *sciens*, though there was no direct saying that he had not any right in them.

*Beaumonts Case.*

636. He was taken upon an *Excommunicato capiendo*, and the *significavit* did not mention that he was commorant within the Diocese of the Bishop at the time of the Excommunication, and for that cause the party was discharged.

*Collins and Willies Case.*

637. The Father promised 10 l. in marriage with his Daughter; the Daughter in consideration thereof promised to pay the 10 l. to the Father; upon which promise action upon the case was brought against the Husband; It was Resolved, that *ex rigore juris* the Action was maintainable; but if the Defendant had pleaded the Covin betwixt the Father and Daughter: *Popham*, said the action would have destroyed the Action: However the Judgment for the practice was stayed.

*Suliard and Stamps Case.*

638. *Assumpsit*; that if he being Sheriff would execute a Writ of Execution, that he would pay him his Fees due *per leges & Statuta Angliae*, and the Plaintiff shewed his Fee was 3 l. the Execution being 60 l. found for the Plaintiff; It was moved in stay of Judgment, that the Plaintiff ought to have shewed the Statute upon which the Fees are due; but it was disallowed, because the Action is not an Action upon the Statute, so as the Statute ought to be shewed.

*Popworth and Archer Case.*

639. It was holden in an Accompt, that the Defendant cannot wage his Law in accompt for the profits of 14. acres of Land for 6. years.

*Hoe and Beltons Case.*

640. A *Scire fac.* to have Execution of Damages; The Defendant said that the Plaintiff had assigned the damages to the Queen, and that the Sheriff by Process out of the Exchequer, had extended his Lands for them; It was adjudged a good Bar, though the Sheriff had not returned his Writ.

*Hoe and Marshals Case.*

641. The Defendant was Bail for one F. at the Suit of the Plaintiff: F. did not pay the money, nor render his Body in a *Scire facias* against the Defendant the Bail; he pleaded that the Plaintiff had released to him all actions after the Bail, and before the Judgment: It was adjudged the Release did not bar the Plaintiff, because the Release was before any duty was due for no duty was by the Bail before the Judgment, *coo. 1. part.*

*Griffin, Lawrence, and others Case.*

642. In *Ejectione firme*; two of the Defendants were guilty, and the other not; he who was found not guilty died: Resolved, That the Plaintiff should have Judgment against the others; for this Action is but in the nature of Trespass, in which the death of one shall not abate the Action.

*Guraway and Braybridges Case.*

*Ejectione firme*; the case was, A had Issue F. his eldest Son, and B, the Defendant his youngest, and conveyed the Lands to the use of himself for Life, the Remainder to F. in tail, the Remainder to the Defendant in tail, and the Remainder to the Right Heirs of the Father: F. had Issue I. the Lessor of the Plaintiff, and died in the Life of his Father; The Father made a Lease for years, the Lessee for years made a Feoffment in Fee, the Father Releases with Warranty to the Feoffee and dyed; The Feoffee enfeoffed the Defendant. It was the opinion of the Justices in this Case, that the Warranty by reason of the Covyn should not bar, and that it was a Warranty which did commence by disseisin.

*The Earl of Lincoln and Fishers Case.*

644. The Defendant gave the Plaintiff the Lye openly in the Leer, for which the Steward assessed a Fine of 20. s. upon him. The Plaintiff brought Debt for the Fine: It was adjudged the Action was maintainable, because they are words of contempt in a Court of Justice to a Judge, for which the Judge might fine him.

*Canes Case.*

645. A *Venire fac.* at the Suit of the Plaintiff was prayed to the Coroners, because the Sheriff was his Master, and the Defendant confessed it; It was tried for the Plaintiff; It was said it was a Mistrial, because a *Venire fac.* ought not to be to the Coroners upon any

any suggestion, if it be not a principal Challenge : But the Court held it good, although he did not conclude his Challenge and so favorable.

*Revera and Baptistaes Case.*

646. *Assumpsit* : The Jury found the *Assumpsit*, but that it was upon another consideration, and not upon the consideration layed in the Declaration . Adjudged against the Plaintiff.

*Tarrants Case.*

647. The Father made a Feoffment to the use of himself for Life, the Remainder to his eldest Son, and the Heirs Males of his Body, the Remainder to his own Right Heirs ; Proviso, That if any of them to whom the Estates are limited, or any Issue Male of their Body, intend, or attempt, or do any Act by which the Premises, or any part of them should be discontinued, that then of that part his Feoffees should be seised to the use of him to whom the Premises after the death of the said party should come, as if he were naturally dead. The Defendant being Tenant in tail, suffered a common Recovery, he in the Remainder entred. It was Resolved that Tenant in tail, could not be restrained from suffering a common Recovery. vide accordingly *Chomelrys case*, and *Germin*, and *Ascotts case* before.

*The Lord Cromwell and Andrews Case.*

648. In Assise ; the Case was ; A seised of a Mannor with an Advowson appendent, granted, bargained, and sold the Mannor and the Advowson to B. and his Heirs, rendring Rent to A. and his Heirs, and covenanted to suffer a Recovery to the use of B. and his Heirs, and covenanted to levy a Fine to B. and his Heirs, with a render of the Rent to A. and his Heirs ; Proviso that B. shall regrant the Advowson to A. for his Life, so as he shall present as often as it should be void during his Life : B. and A. both joyn in a Fine to J. S. who renders the Rent to A. in tail, with the Remainder to J. D. and renders the Land to B. and his Heirs ; Afterwards B. died before a Regrant of the Advowson. A. enters upon the Heir, and enfeoffs the Lord Cromwell, upon whom the Heir of B. reenters. There were three points in this Case. 1. If the Proviso for the regrant of the Advowson made the Estate of B. conditional in the whole Mannor. 2. If the condition by the death of B. without regrant of the Advowson be broken. 3. If the Condition be extinct by the Conuifance and fine, and revived as a Limitation in the use of the Fine: The case is here only largely argued, but not adjudged, *Vide Resolution of this Case, Coe. 2. p. 4. and here before pl. 229.*

*Hiddy and Welbouses Case.*

649. In Trespass; for taking of his Chertel; The sole point in the Case was; Whether Toll was incident to a Fair of common Right; It was Resolved, that Toll is not incident to a Fair of Common Right, and that none shall have Toll in a Fair, if he hath it not by Grant or Prescription; But it was agreed, that the King might grant Toll with a new Fair, if the Toll be reasonable, and not excessive; but if it be to have 1 d. upon every Beast, they took it to be unreasonable. *vide Cro. 3. part 559.* accordingly.

*The Queen and Doddingtons Case.*

650. In account against the Defendant Executor of Sir Walter Mildmay; The Case was, The Marquiss of Winton 1 Eliz. being Treasurer of England, and Sir Walter Mildmay Chancellor of the Exchequer, and of the Court of Augmentation, then lately dissolved and united to the Exchequer, allowed Sir Walter Mildmay 100 l. per an. for diet, and 40. l. per an. for his attendance in the Office of the Chancellor of the Exchequer; After which, 2 Eliz. a Privy Seal came to the Treasurer, Chancellor of the Exchequer, to pay the Fees and Allowances by Patent or Parliament, to the Treasurer, Chancellor of the Exchequer, and other Offices, and to give such Rewards to other Officers, they should think they deserved: There were divers points in this Case. 1. If the Treasurer alone *ex officio* might increase Fees or Allowances to the Queens Officers. 2. If a Privy Seal was a sufficient Warrant to do it. 3. If he might give a Reward to the Chancellor by the Warrant. 4. If the Privy Seal being after the allowance made, and before payment, come in time to excuse the payment. 5. If account did lie against Sir Walter Mildmay himself. 6. If his Executors were chargeable in account. This Case is in this Report only argued, but not Resolved. But *vide in 100. 11. pa.* in the Earl of Devonshires case, this case is pur, and there it was said, it was Resolved in this case, that no officer of the King, might *ex officio*, issue or dispose of the Kings Treasure, although it be for the honor and profit of the King, without a Warrant from the King; and a Warrant by word of mouth, or under this privy Signet, is not sufficient, but the Warrant ought to be under the Great Seal or Privy Seal; and if the Chancellor of the Exchequer doth receive the Kings Treasure to his own use, he shall be charged in account for the same.

*Worme and Websters Case.*

651. A seised in Fee of Lands holden in capite, made a Feoffment thereof to B. and C. to such intents and purposes, and to such uses and estates, and in such manner as are declared and limited; or should be declared in the last Will of the said A. Afterwards he made his Will



Will in this manner, viz. *I Will and Devise that E. my wife during her Life, shall have and take the profits of all my Mannors and Lands, and after her decease I devise them to G. P. and the Heirs of his body, and died. E. entred and died. G. P. entred.* 1. Question if the Devisees took their estates respectively, by the Will, or by the Feoffment; if by the Will, it was void for a third part, and a Tenancy in common: If by the Feoffment, it was good for the whole. 2. point, when the use of the Feoffment is expressed to such persons as should be declared by the Will, and he deviseth the Land, if the same shall be said to be a limitation of the use, according to the Authority. The case not Resolved, because the Justices were divided in their opinions. It was adjourned.

*Prat and Phanners Case.*

652. Debt upon Obligation: The condition was, Whereas Suits have bin brought prosecuted betwixt the Defendant and *A* his Wife, which controversies are now finally to be ended betwixt them, if the Defendant do not from henceforth commence and prosecute any Suit or Action in any Court or Courts Spiritual or Temporal, against the said *A*. his Wife for any matter precedent, or cause from the beginning of the World, but shall from henceforth, during the natural Lives of him the Defendant, and *A*. his Wife, account of use, and maintaine the said *A*. as his lawful wife to all intents, &c. then, &c. The Defendant pleaded he had not brought any Action in any Court against the said *A*. after the said Obligation, and that before *A*. was married to him, she was married to *J. S.* who is yet alive, for which cause he cannot accept of and maintain the said *A*. as his lawfull wife, according to the Form of the Condition, upon which it was demurred: It was Resolved, that the material part of the Condition, did consist in the first part of the Condition, if he do not prosecute any Suit, and the Defendant having pleaded an Issuable Plea to that, it is not material if he plead to the latter part of it or not; and if his Justification be insufficient, the Plaintiff ought not to have demurred upon it: But the Court held his Justification to be good, because the Condition as to that part, is against the Law of God, and so the Obligation void; And whereas it was objected that he is estopped to plead the special matter of her former Marriage, because in the Condition she is called *A*. his wife: The Court said he was not estopped by it, because he may confess and avoid it; for she may be his Wife as to some purposes; but as to use her as a lawfull wife, she is not his wife.

*Lloyd and Wilkingsons Case.*

653. In *Ejectione firme*, the case was: *A*. Rector of *C.* by Indenture between him of the one part, and *E. R. W.* and *T.* of the other

other part, devised the same to E. for 80. years, if she should so long live, and should not alien the premises, and if she should die within the Term, or should alien, that then her Estate should cease, and that then the same should remain to R. *pro & durante residuo predicti termini predicti* 80. annorum; and if he should alien, &c. *ut supra*, then his Estate should cease, and then the same should remain to W. *pro & durante tot annis predicti termini* 80. annorum si, &c. and if he should alien *ut supra*, then his Estate should cease, and then the said A. *concessit promissa durante tot annis, predicti* 80. annorum quod ad tunc continuarent & remanerent in expiratis to T. his Executors and Assignes. A. died. F. died. E. and R. died. The Administrator of F. entered, and assigned over the same. In this Case it was Resolved, That the Demise to R. and W. were void, because that the Estate which E. had, was not for 80. years absolutely, but *sub modo*, under a condition, and then the Demise to them *pro tot annis quot remanerent*, after the death of the said E. *pro & durante residuo termini predicti* 80. annorum was void, for there could not be a residue of the said Term, because that determined by the death of E. 2. Resolved, That the Lease and Limitation to F. was void for the uncertainty, for it was uncertain at the making of the Lease, how many years should be behind at the time of the death of E. 3. Resolved, That the Demise and Limitation to T. was not good, because that R. and W. survived F. which was against the express Limitation; for his Estate was limited upon two Contingents.

Pigot and Hearn's Case.

954. In Trover and Conversion; the case was this: The Lord of the Mannor of B. in the Parish of D. did prescribe, that he and his Ancestors, and all those whose Estate &c. had used from time to time, whereof &c. to pay to the Parson of D. the now Plaintiff and his Predecessors 6 l. per an. for all manner of Tythes; growing within the said Parish, and that by reason thereof, he and all those whose Estates, &c. Lords of the said Mannors, had used time whereof, &c. to have *Decimam garbam & decimum cumulum garbarum*, of all of his Tenements within the said Mannor. It was in this case Resolved, that it was a good Prescription, and that a *Modus decimandi* by the Lord for himself, and all the Tenants of his Mannor, from barring the Parson to demand tythes in kind, is a good Prescription, because it might have a lawful commencement. 2. It was Resolved, That it was a good Prescription to have *Decimam garbam* in, or *Decimum cumulum garbarum* or *gramorum*, or the tenth Shock; for he hath it as a profit appender, and not as Tythes. 3. Resolved in this case, that if the Queen be Lady of the Mannor, she might prescribe to have

have Tythes, for that she is capable of them, she being *Persona mixta, & capax Spiritualis Jurisdictionis*.

*Holcroft's Case.*

655. A. seised of Lands in Fee levied a Fine thereof to the use of himself for Life, the Remainder to B. his Son for the Term of his Life only, so long and untill he attempt to alien, and then to the use of C. and the Heirs Males of his Body, during the Life of B. and immediately after his death, to the use of the first begotten Son of B. then after to be begotten, and the Heirs Males of his Body, and so successively, to his Second, Third, or Fourth Son, to be begotten in lawful Marriage; and if it fortune the Fourth Son to die without Heir Male of his Body, then to the use of C. and the Heirs Male of his Body, with diverse Remainders over in tail, the remainders to the right Heirs of A. A. dyed, B. (having only one Son born after the Indenture and Fine, which dyed without Issue Male) joynd in a Fine with C. to J. S. and J. D. who rendred the Land to B. for 80. years next following, if the said B. so long lived, and immediately after his Decease to the first begotten Son of the said B. for which afterwards he should beget, and the Heirs Males of his Body, and so successively to the Second or Third Sons, the Remainder to C. and his Heirs; B. never had any Son afterwards, but dyed having Issue a Daughter, his sole Daughter and Heir. Afterwards C. dyed having Issue. It was Resolved in this case, that it shall be intended in the Limitation of the use, that after the death of B. without Issue Male, that C. should have the Land as well where no attempt is to alien, as where there is an attempt, because the words are, *and immediately after his decease, then to the first Son, &c.* by which they conceived, that the use which should rise upon the attempt to alien, is only restrained to the use of B. for Life.

2. Resolved, that by the words, *If it fortune the Fourth Son to die without Issue, then to C.* and in truth B. never had a Son, that the use should rise to C.

3. Resolved when the render was made to B. for 80. years if he should so long live, and after his Decease to his first Son, &c. with the Remainder to C. that all the Remainders were void, because the Estate of the Freehold during the Life of B. did not pass by the Render out of the Conusees, but the Inheritance compleat did remain in the Conusees.

4. Resolved, That the Conusance of the Fine, is of necessity to be intended to the use of the Conusees, because they otherwise could not render by the Fine; but if the Render had bin void in all, as it is in part, then they conceived the use should go according to the Render, but not in this case, because the Render for 80. years was good, and so the use remains in the Conusees.

## The Lord Buckhurst's Case.

656. The case it self is very long, being upon several Conveyances, Settlements, of very many great Mannors, Lands in several Counties within the Realm of England, and by her last Will to several persons, or to their uses, or to her Executors, for the performance of her last Will, upon which diverse matters of Law did arise, which were very largely and Learnedly argued by Council, but not Resolved; some points in Law were agreed upon and Resolved, which *vide in* *Co. 1. Reports in the Lord Buckhurst's Case*, and were these in Substance; viz. 1. If a man grant Land for him and his Heirs, to another and his Heirs, that is a general Warranty, because it is not restrained to any person certain. 2. If a man seised in Fee-simple hath diverse Evidences, some containing Warranty, and some not, and convey the Land to another without Warranty, upon which he may be vouched, the Purchaser shall have all the Charters and Evidences, as well those which contain the Warranty as the other, for in as much as the Feoffor hath conveyed his Estate absolutely, and is not bound to Warranty, it is reason that the Feoffee for his better assurance have all his Charters as incidents to the Land, although they are not granted to him by express words. 3. If the Feoffee in the case aforesaid make a Feoffment with Warranty, so as he is bound to render in value in such case without express Grant, the Feoffee shall not have any Charters which comprehend Warranty, upon which the Feoffor may have his Warranty paramount, for the Feoffee hath not taken upon him to defend the Title, but the Feoffee shall have the Evidences which do concern the possession. 4. If A. enfeoff B. with Warranty, to him, his Heirs and Assignes, and B. enfeoff C. with Warranty, although that C. may vouch A. as Assignee, yet he shall not have the first Deed, for B. hath made a Warranty to him, and may be vouched, and therefore he shall have the first Deed. 5. If A. be seised of a Seignory, Rent, Advowson, or any thing which lies in Grant, and grants the same over to B. with Warranty, and B. grants the same over to C. with Warranty, C. shall have the Charter, although that B. is bound to Warranty, for that it is for his necessity to make his Title, and without it he cannot make any defence against A. or any claiming by him. 6. If a man maketh a Feoffment in Fee with Warranty and dieth, the Heir of the Feoffee shall have all the Charters which the Feoffor himself may have, although the Heir hath nothing by descent, for the possibility of descent after.

Barker

## Barker and Borne's Case.

657. Debt against the Heir upon an Obligation of his Father, and Judgment is given against him upon *nihil dicit*; the Judgment shall be general, and not only of the Lands special which descend, but extend to his own Lands.

## Thompson and Butlers Case.

658. An Annuity is granted to a woman for Life, she takes Husband, the Husband during the Coverture, by express words releases the Annuity; Resolved, that the Release of the Husband doth not extinct the Annuity, but that if the Wife survive, she shall have it.

659. It was Resolved by all the Justices, That if the Clerk of the Market do take a Fee of a peny for view only of Vessels which are not defective, and doth not Seal them; or if he Seal them, he take a *d.* upon every Vessel, the same is extortion,

660. Resolved upon the Statute of 33 H. 8. 28. & 23. *Elix.* That if Tenant in tail become Recusant, is convict, but not by Judgment upon Tryal or Confession, and dieth, and his Lands seized, that the Issue shall avoid it, because it is not a debt by Judgment as the Statute of 33. H. 8. requires.

## The Lady Willoughby's Case.

661. Sir Francis Willoughby died, his Wife with child. P.W. who had married the Daughter of Sir Francis, and had a great part of the Possessions settled upon him for want of Issue Male of Sir Francis, attempted to suffer a Common Recovery, to the intent to bar the Issue Male of Sir Francis; and disinherit this Issue in ventre of his Wife; to stop the Recovery she pretended she was with child; P.W. prayed a *VVrit de Ventre inspiciendo*, which was granted, and the Sheriff of London came to the Ladies House, and brought a Jury of women, whereof two were Midwives, and they searched the Lady, and the Sheriff returned that she was with Child.

## Clark and Hardwicks Case.

662. *Scire fac.* upon Recognizance in Chancery, acknowledged by H. to M. of 200 l. The *VVrit* was brought by the Plaintiffs Executors of M. the Sheriff returned *Mortuam*; whereupon a new *scire fac.* issued against the Heir and Terre-Tenants: The Sheriff returned K. Terre-Tenant of certain Lands, and C. Terre-Tenant of the Mannor of D. K. made default, C. appeared and pleaded a Joynt-tenancy with two other who were alive not named in the *Writ*, nor Returned. It was adjudged that upon this Return and Plea of Joynt-Tenancy that the *Scire facias* should abate, and a new *Scire facias* was awarded.

Daw)

*Davy's, Mathew and Binfields Case.*

663. 3. *Eliz. Ejectione firme*; The Case was, Husband and wife seised for the Life of the wife, made a Lease of a Mill to B. the Defendant for 17. years, who 34. *Eliz.* assigned the same to C. for 14. years, rendring yearly three Bushels of Mestlyn, and one Bushel of Wheat in name of a Rent every Saturday, and if it fortune the weekly Rent to be unpaid or undelivered, then the Lease to cease. B. entred and C. possessed of the Reversion by Deed Poll, granted the Reversion, *et totum interesse sui*, to D. to whom B. attorned. K. demanded the Rent Corn upon a Saturday, which was not paid, for which he entered. It was Resolved, 1. that the Rent reserved by the first Lessee, upon demise of the Will for a less Rent, was incident to the Reversion of the ancient Term, and shall pass by the words of all his Estate, and by *totum interesse*; the Rent divided from the Reversion will pass, and the Reversion by the words *totum statum*. 2. That the Assignee *de toto statu*, shall take advantage of the cesser of the Term *in esse*, and make the demand of the Rent, if the Grant *de toto statu* be by writing with attornment. 3. That by the Statute of 32. H. 8. the Grantee of the Reversion shall have benefit of a Condition annexed to a lesser Term, divided out of the first Term: There was another point, If the demand of the Rent was good or void; which was not Resolved.

*Coulter and Irelands Case.*

664. It was Resolved in this Case by all the Justices of England; That an Executor of his own wrong, could not pay himself a Debt or a Legacy.

*Chambers and and Handbarges Case.*

665. In case of a Prohibition; It was suggested that the Queen, and all those whose Estates she had had, used to pay to the Rector of D. 2s. 4 d. yearly, in full satisfaction of the Tythes of Land in C. Issue was upon the Prescription: It appeared that the Abbot of K. was owner of the Land and Rectory, which afterwards came to the Queen, who was seised as the Abbot was: Resolved that the Unity was not a perpetual discharge of the Tythes, nor of the Recompence for them.

*Broughton and Randal's Case.*

666. A *Tales* was awarded upon the Return of a *Distingas*, where none of the principal Pannel appeared, yet holden it was good; But a *Tales* is not grantable upon the Return of the *Venire*, if none of the principal Pannel do appear.

## Benton and Trotts Case.

667. In case of a Prohibitor: It was Resolved in this Case, that unity of the Estate, and not in occupation of the Land and Rectory at the day of dissolution of the Abby, was not a discharge of payment of Tythes by the Statute of 32. H. 8. But if the Abbot held the Land at the time of the dissolution in Fee, and the Rectory also, those Lands were always discharged; but if the Lands were in Lease for years, although but for a small Term of years, the Lands should pay Tythes, and so it was said it was adjudged in *Knightly and Spencers case*, and in *Green and Bushyns case*, and *vide* to that purpose; *See*, 11. *par. Fiddle and Nappers case*.

## Verey, Carew and Gibsons Case.

668. A Seised of Lands in *Middlesex* and in *London*, acknowledged a Statute to *Carew*, and afterwards conveyed the Land in *Middlesex* to one which came to the Plaintiff by purchase, and the Land in *London* he conveyed to G. the Defendant and died: The Administrator of *Carew* sued a *Scire fac.* against the Conusor in *Middlesex*, who was returned *mortuus*, upon which he had a *Scire fac.* to the Terre-Tenants in *Middlesex* generally, and *Verey* the Plaintiff was returned Terre-Tenant, and made default, upon which Judgment was given for execution, and that a Moiety of the Land in *Middlesex* should be extended, upon which he brought a *Scire fac.* in the nature of an *Audita Querela* against the Administrator, and *Gibson* Tenant of the Lands in *London*, to shew cause wherefore the moiety of the Lands in *London* should not be extended: It was the opinion of *Popham* Chief Justice, that he might have a Writ, wherefore the Lands *resitui non debent*, but not an *Audita Querela*; but the other Justices held, that that was the most beneficial way for him who was grieved by the former extent; but if he will not pray restitution of what is past, but only a contribution for an equal extent to satisfy what did remain, they saw no cause but that he might have it; for the foundation of the Writ is equal extent; and it was said that the Book of 39 E. 3. 7. and 39, was that it was in Election of the Conusor, to take his *Audita Querela* for restitution, or for future contribution.

## Wild and Coopmans Case.

669. Words, viz. *Thou art a false forsworn man, thou wast forsworn at the Leet of R. and didst procure others to be forsworn*; The Defendant justified, because that the Plaintiff was one of the Jury, and presented that to be a *Nusance*, which was no *Nusance*; Adjudged the Justification was not good, and that the Action did lie for the words.

Parry and Woodward's Case.

670. Debt upon a Bill, which was, Be it known that I, do owe to Parry 14 l. to be paid at the Feasts of *St. Michael* together with 6 l. which I owe him upon Bill and Recognizance subscribed under my hand: The Plaintiff brought debt for 20 l. and adjudged against him because the Bill made him Debtor for no more then 14 l.

Vaughan's Case.

671. Intrusion: The Queen by her Letters Patent *ex tertia scilicet* gratia specialis & *mero motu*, granted to J. S. which were late parcel of the Priory of L. and came to the Crown by dissolution of the Premises, or any part thereof, or the issue or profits thereof were before the first of April 4. *Eliz.* concealed, substrained, or unjustly detained from her Father, Brother, Sister, and so remained at the date of the Letters Patent, untill they were revealed by the Patentee; and it was found by a Commission in 8. *Eliz.* issued forth to enquire of the Reparations of the King granted, and how much money would repaire it; and that the Queen was allowed the value of the Stone and Lead expended in the Reparations: This was adjudged to be no concealed Land, and therefore the Patent void.

Michel and Long's Case.

672. If a Battery be laid in D. in the County of N. with a continuando in *Middlesex*, and Issue be upon it, the Verdict shall be of both Counties.

Thompson and Gardiners Case.

673. The Plaintiff had 100 l. delivered to him to pay over to J. S. and the Defendant came to him and affirmed he was J. S. to whom he delivered the 100 l. and in truth he was not J. S. Adjudged that an Action of Deceit lay against him.

Shorborne and Lewin's Case.

674. The Hospital of Donnington was incorporated by the name of *Minister Dei pauperis domus de Donnington & confratres ejusdem*, and they made a Lease by the name of *Minister pauperis Domus Dei de Donnington & elemosynarii confratres ejusdem*: The Justices were divided in opinion if it was a good Lease.

Rosse and More's Case.

675. Assumpsit: In consideration that the Plaintiff would relinquish a Suit which he had against a Stranger, the Defendant promised to save the Defendant harmless from all actions concerning such a Lease; It was adjudged no good Consideration because he may afterwards prosecute the Suit again when he pleaseth.



## Bannister and Lillyes Case.

676. Debt for Rent upon a Lease for years. The Defendant said J. S. was seized and died, and his Heir entered, and the Plaintiff disseised him, and made the Lease, and the Son recovered before the Rent day; The Plaintiff said J. S. was not seized, nor died seized, and that he did not disseise the Son: The point was if the disseisin or descent was traversable; adjudged the Disseisin.

## Stoner and Gibsons Case.

677. It was adjudged in this Case, that the Lessee for years of a Copyholder might maintain *Ejectione firmæ*;

## Digby and Vernans Case.

678. Resolved, It is a good Plea in abatement of an *Ejectione firmæ*, that the Plaintiff hath another *Ejectione firmæ* depending of the same Land.

## Holwaston and Ridges Case.

679. It was Resolved in this Case, That upon an Information exhibited in the Spiritual Court, for laying of violent hands upon a Clerk, and costs there given against the Defendant, for which he was excommunicate for not paying them; a Prohibition should issue forth, because it was not at the Suit of the party, and costs are not grantable there upon an Information.

## Butler and Goodales Case.

680. Upon an Information upon the Statute of 21 H. 8. of Non-Residence: It was Resolved, That the Parson ought to dwell upon the Parsonage-house, and not upon another house, although it be within the Parish, both for serving the Cure, and maintaining of Hospitality; *v. 600. 6. par.* the same case.

## Odham and Smiths Case.

681. Error of a Judgment in C. B. for Trespas there for taking of an Ox, the Plaintiff there assigned the Trespas generally in D. the Defendant justified the taking of the Ox damage Feasants; the Plaintiff made a new Assignment, upon which the Defendant justified for Heriot Service, and the Judgment there passed against the Defendant, because he could not varie from his former Justification, but should be estopped by it. It was the clear opinion of all the Justices that he might well varie in his Justification upon the new Assignment, and therefore the Judgment was reversed.

## Keymer and Parkers Case.

682. An Apparator came to the Church of a Parson, and said to him, he is to pay Tenths to such an one at such a place, four miles distant from the Church, to whom the Parson did not pay them, and thereupon the Bishop certified that he refused to pay them according to the Statute of 26. H. 8. It was Resolved the demand was not according

according to that Statute, and the Summons to pay them not according to the Statute; for the demand ought to have been by one who hath authority to receive them, which the Summoner had not; and they held the demand not good, although the Bishop certified it was duly made.

683. One who exhibited an Information upon a penal Law, died. It was Resolved, That notwithstanding the death of the Informer, yet the Queens Attorney might repay and prosecute the Information, for that neither death, nor the Release of the Informing party, could bar the Queen from the moiety.

*Holliday and Lees Case.*

684. In a Prohibition: It was Resolved that Tythes should not be paid of Beeches, although above twenty years growth.

*Cartwright and Daleworths Case.*

685. Debt upon an Obligation taken by the Plaintiff Sheriff of the Detendant his Clerk, upon condition to pay the Queens Silver into the Exchequer within 14. days after he received it; The Detendant pleaded he Statute of 23 H. 8. c. 10. and averred it was taken *colore Officii*: Upon demur it was adjudged for the Plaintiff, for the Statute doth not intend such Obligations taken of them which are not to appear, nor are in custody.

686. It was holden by the Justices, that if the Sheriff takes goods in Execution upon a *Scire fac.* and hath the goods in his hands, and a *Superfedeas* comes to him, yet he shall not thereupon redeliver the goods, but may proceed and sell them upon the Execution.

*Armiger and Hollands Case.*

687. In case of a Prohibition: It was Resolved that by the Common Law before the Statute of 21. H. 8. the first Benefice was void without a Sentence *Declarative*, so as the Patron might present without notice. 2. That the Statute of 21 H. 8. of Pluralities is a general Law of which the Judges are to take notice without pleading of it 3. That the Queen might grant Dispensations as the Pope might, in case where the Arch-Bishop had not Authority by the Statute of 25. H. 8. to grant Dispensations, because all the Authority of the Pope was given to the Crown by the Statute, but yet the Statute as to those Dispensations which the Arch-Bishop is to grant, hath Negative words, and the Bishop shall make the Instrument under his Seal.

*Mosley and Fossels Case.*

688. In Action upon the Case, the Plaintiff declared that the Detendant took the Plaintiffs Gelding to pasture for 2 s. the Week, and the Detendant was to keep it safe, and redeliver it upon Request,

quest, and that the Defendant kept it so negligently, that it was taken away by persons unknown; The Court was divided in opinion, if the action lay without alledging a Request for delivery of it: But it was agreed by them all, that without a speciall Assump, fit the action did not lye against the Defendant.

*Shurington and Minors Case.*

689. A man devised Lands in Tail with diverse Remainders over, and with this Clause, *viz.* My minde is, that if any of the said persons afore entaild to my said Lands, or their Heirs, do unlawfully vex, disquiet, or trouble any other of them for the same; Or do Mortgage, pledge, or sell the same, or any part thereof, or his interest, possibility, or title therein, or do hurt, fully dismember, or waste the same, &c. That then every such person and his and their Heirs shall forthwith be cleerly discharged, excluded and dismissed, as touching the said entail of mine, and the conveyance by words forgoing, of the entail of my said Lands to be of no force to him, or them, but the same immediatly to descend and come to the party next in Tail to him, or them effectually, as if such disordered person had never been minded of in this my Will; B. having this Land by the forfeiture of the former estate, she and her Husband levied a Fine of it, he in the next Remainder entred; It was holden by the Justices, that the estate of each of them in the Remainder was subject to the limitation, to cease by alienation, and that the next in the Remainder might enter.

*Corbens Case.*

690. In Consideration of Marriage, the Father agreed by word to stand seised of Land to the use of himself for life, and after to the use of his Son and his Heirs; The point was, if the same did alter the use, because the Father afterwards devised the Land to his younger Son; this Case was argued only, and adjourned.

*Collins and Hardings Case.*

691. A man seised of Freehold and Copyhold, by License made a Lease of both at one entire Rent; the Lessee assigned his Terme, and afterwards the Lessor Released all demands to the first Lessee. Afterwards the Lessor granted and surrendered the Reversion of the whole to a stranger, who brought Debt against the Assignee for Rent: It was Resolved, that the Rent was not determined by the Release, because the Release was after the assignment of the Terme; in which case it was in the Election of the Lessor to charge the Lessee or Assignee; but for Rent due before the Release, that was extinct by the Release: But whether the whole Rent should issue out

of the Freehold, or should be apportioned, the Justices were divided in opinion.

*Cooper and Langworths Case.*

692. A man sued forth an *Elegit* upon a Recognizance in Chancery, but nothing was done nor Returned upon it. Resolved, that he might sue a *Fieri fac.* upon the same Recognizance, and so if a man hath Recovered debt upon a Obligation, he shall have another Action of debt, if he hath not sued forth Execution.

*Mush and Edmonds Case.*

693. Debt upon an Obligation, to be such a day at the Kings head in D. and there to choose two Arbitrators to joyn with others, to arbitrate all matters betwixt them; The Defendant said, he was there at the last instant of the day to make the Choice; adjudged no plea; for he ought to have been there in such time that they might have chosen Arbitrators.

*Bells and Smiths Case.*

694. A man made a Feoffment in Fee, to the use of himself and Wife for their lives, and after to the use of B. their eldest Son, and after his decease to the use of him who should be his eldest Son at the time of his death in Tail, the Remainder to C. in Tail, the Remainder over in Fee; the Feoffor dyed, the Wife made a Lease to B. for years, who enfeoffed a stranger; the Wife dyed C. levied a Fine to the Feoffee with Proclamation; afterwards B. dyed having issue a Son at his death who entred; the Feoffee having granted a Rent charge, the grantee distrained and avowed: It was adjudged, that the Feoffment of B. and the Fine of C. had prevented the future use to rise in the Son of B. and so it was adjudged in *Ards and Terringhams Case.*

*Stebbing and Goswells Case.*

695. By the Custome of the Mannor the Copyholders had used to have the tops and loppings of the Trees upon their Copyhold; the Lord cut down all the Trees; Adjudged, that Trespas did lye by the Copyholder against the Lord.

*Drove and Shores Case.*

696. A Jurour delivered to one of his Companions an Escrowle for Evidence, which was not given in Evidence at the Tryal: Adjudged no Cause to stay Judgment unlesse it appear he received it from one of the parties, which did not appear.

*Hemleys and Brices Case.*

697. A man devised all his Lands, whereas but two parts passed; the devisee entred and let the whole for years, the Heir without actual entry Levied a Fine to a stranger of a third part, the Co-

nufsee made a Lease for life to a stranger, the Remainder to the Queen by deed enrolled, upon condition to be void upon tender of money to the Tenant for life. Resolved in this Case, that the entry of the devisee into the whole, and his making a Lease of the whole for years, was no disseisin to the Heir. 2. That the Tender of the money to the stranger should divest the Remainder out of the Queen; because the condition was not performable to the Queen, but to the Tenant for life.

*Markham and Gomastons Case.*

698. Action upon the Case; Whereas the Plaintiff for the debt of I. S. was bound with I. S. in Recognizance to F. and I. S. and F. his servant became bound to the Plaintiff to save him harmless, in which the first Bond was recited with a blank, for the Christian name and dwelling place of T. the Defendant after the sealing and delivery of the Counter bond, and before the Plaintiff agreed to it, filled up the blank; so as in debt brought against F. he pleaded *non est factum*, and the Plaintiff was compelled to be Nonsuit: It was holden that the action did well lye against the Defendant.

*Elston and Breys Case.*

699. Execution was sued upon a Statute in Chancery, and the Liberate executed by the Conusee himself being Sheriff, and the proper name was not endorsed, but only *Vic.* It was adjudged erroneous and void.

*Mills and Parsons Case.*

700. Tenant in Tail for 1000 l. bargained and sold by deed enrolled certain Lands to I. S. and Covenanted in consideration of the said 1000 l. and of a Rent then after to be granted by the bargainee, that if he sold any other part of his Lands (which he held in Fee) that the bargainee should have the offer of them before another, and if he attempted to sell without offer and notice to the bargainee, then he and his Heirs for those considerations would stand seised to the use of the said I. S. and his Heirs, of all he should attempt to alien without notice or offer. I. S. dyed, K. being his Heir, the bargainor sold other Land without notice or offer, to another, and he sold the Land to one who had notice of the Covenant. It was in this Case Resolved, that the Consideration to raise the use in the other Land was good, although but one of the things was performed, viz. the payment of the money. 2. If the Heir shall have benefit of the contingent use; not Resolved.

*Terrill and Darcyes Case.*

701. Accompt against the Defendant as Bailiff of Cloathes; the Defendant said for part he was Bailiff to the Plaintiff and a stranger joyntly, and for the Residue he was as Bailiff to render accompt; It was found he was Bailiff for 16 Cloathes, but there was no mention if the 16. were to them joyntly or not; It was in *co. B.* adjudged for the Plaintiff; and upon Error brought, the Judgment was affirmed.

*Scrogs and Spencers Case.*

702. A *Distingas* to the Coroners was returned by them; with subscription of their names, but not (*Coronatores*;) It was adjudged Error, for both the Surnames and names of Office ought to be subscribed.

*Medcalfes Case.*

703. Two shooting at Butts, having both but one shot to winne the game, waged 40 *l.* one with the other for the upshot, he who won brought *Assumpsit* against the other for the 40 *l.* upon *nihil dic.* Judgment was for the Plaintiff; It was holden the action was maintainable.

*Ardes and Watkins Case.*

704. *A.* seised of Land made a Lease for 30. years, the Lessee made a Lease for 28. years rendring 30 *l.* rent, and afterwards he Devised 28 $\frac{1}{2}$  of the rent to 3. persons *divisim viz.* to each of them a full 3. part, which was 9 $\frac{1}{2}$  *l.* 6 *s.* 8 *d.* One of the devisees brought debt for his part against the Lessee: It was the opinion of the Justices, that the Rent was apportionable, and that the Tenant is chargeable without attornment by the devise to each of the devisees for the 3. part of the Rent.

*winters Case.*

705. It was said by *Popham* Chief Justice, that Clergy is allowable upon the standing Mute for such a Felony, for which Clergy is allowable, if the party be found guilty, and therefore he allowed Clergy to *winter* who stood Mute upon an Indictment of Felonious taking of goods.

706. The Case was, a man robs one in the high way in one County, and is apprehended with the goods in another County, and indicted for the goods; and found guilty to the value of 10 *d.* The question was if by the Statute of 25 *H. 8.* he shall have Judgment of death, or be whipt: It was the opinion of the Justices, the Case being put to them at *Serjants Inn*, that he shall be but whipt, and that the Statute of 25 *H. 8.* doth not extend but to those who demand Clergy, which they shall be denied if it be found by examination to be done with Robbery.

*Lever and Heyes Case.*

707. The Father of the daughter promiseth to the Father of the Son, that if he will give his consent to the Marriage. and assure 40 l. Land to his Son, that the Father of the Daughter will pay 200 l. to the Son in Mariage; It was Resolved in this case, that if the Father of the daughter do not pay the 200 l. that the Son shall have the Action upon the promise, and not the Father.

*Egerton Case.*

708. *Egerton* the Queens Solicitor, was commanded by Writ to attend upon the Lords in the upper House of Parliament; After he attended there 3. dayes, he was chosen Burgesse for the Borough of *Reading* and Returned; The Commons came to the upper House and demanded, that he might be dismissed from his attendance there, and be sent them into the Lower House; but upon Consultation he was retained there still, because he being neither Inhabitant nor Free of the said Town, might choose if he would serve at their Election or not, which he expressely refused to do. 2. Because he was first attendant in the upper House. 3. Because the Queen had power to prefer him to the upper House aswell as she had power to command him.

*The Bishop of Norwichs Case.*

709. The Bishop pleaded a private Act of Parliament, and mistook the day of the Commencement of the Parliament; It was adjudged against the Bishop, for although the Judges are not to take notice of the private act, yet of the beginning of the Parliament they are to take notice of.

*Helgor and Whiteacres Case.*

710. *Replevin*, The Defendant avowed that a Parsonage was parcell of the Prebendary; the Prebend before the Statute of 13 *Eliz.* was Leased for 50. years in Reversion to *I.* who assigned it to *B.* who assigned it to *C.* who assigned it to *H.* the Lease in possession ended, *H.* entred and made the Lease to the Plaintiff; The Plaintiff confessed the Lease to *I.* and the Assignments, but said, that *I.* so possessed took to Husband *T.* who before the assignment to *B.* assigned the Terme to *I. S.* who dyed possessed, *absque hoc* that the said *I.* assigned her estate and Interest to *B.* It was adjudged for the Avowant; because when the Plaintiff confessed and avoided, he ought not to have traversed, but might have prayed Judgment without Travers; and so by reason of the Travers, it was adjudged against the Plaintiff.

*Vaviso's Case.*

711. Resolved, That if the Sheriff makes his Warrant to a Corporation who have return of Writs, to arrest I. S. they may make a Bailiff to arrest by *perot* only.

*Robes, Bent and Cocks Case.*

612. A. a villain purchased the Inheritance of a Copyhold in the name of B. and another in Trust; B. surrendered his moiety to the use of his own Son, the other dyed seised. The Son of B. and the Heir of the other for money sold the Copyhold to C. for 50*l.* being of the value of 80*l.* A. sued the Son of B. and the Heir of the other and C. in Chancery, for the 80*l.* It was Decreed, the A. should recover the 50*l.* only, from B. and the Heir of the other, and C. should be discharged of it.

*The Lord Husdons Case.*

713. In a *Monstrance de droit* for certain Lands in ward to the Queen for the Nonage of B. upon Jury returned, the Array was challenged by the Queens Attorney, because it was Returned by the Sheriff of Kent who was also Tenant to the Plaintiff; A Counterplea was thereunto, that he was Tenant to the Queen: It was the opinion of the Justices, that the Counterplea was little material; for although he was Tenant to both, yet he who takes the Challenge shall have advantage thereof. Afterwards, the array was Quashed, and a *venire de novo* awarded.

*Lady Russell and Gulwe's Case.*

714. The Lady demised Lands to the Defendant by Indenture, Defendant entred bonds to performe the Agreements in the Indenture: Debt brought by the Lady for breach of Covenants, and assigns the breach in disturbance of her in the occupation of certain Lands excepted in the Indenture out of the demyse; and adjudged against the Lady, for that it was breach neither of Covenant nor agreement.

715. Note by Egerton Lord Keeper, if there be Tenant for life, the remainder for life, the remainder in Fee; and the Tenant for life committeth Waste so as he is punishable by the Common Law; yet upon Complaint, he in the remainder in Fee, may have an Injunction against him not to do Waste.

*Penner and Crompons Case.*

716. In a Prohibition, It was holden, that none shall be chargeable for contribution to Church Reckonings if he do not Inhabite there, or to consent to them.



*Povle and Vceres Case.*

717. *A.* made a Lease to *B.* of the Mannor of *S.* for life, which was executed by Livery with these words, that if it fortune *B.* to marry any Woman during his life, who shall happen to overlive him, then the Land to remain to such Woman for her life: *Proviso*, If *B.* do not declare by writing sealed, or his last Will, that he Wills she shall have it, then it shall not remain to her. *B.* before any marriage makes a Feoffment to *I. S.* to whom a Fine is levied, and a Recovery suffered; Afterwards *B.* takes a Wife, and declares she shall have the Remainder, and after *D.* and his Wife Levy a Fine to the Heirs of *I. S.* and afterwards *B.* makes another declaration, that the Land shall remain to the Wife, and then *B.* dyes and the Wife enters; It was adjudged her entry was not Lawfull, because the Remainder (if it was ever good) was destroyed by the Feoffment, and the Freehold supplanted before the Remainder took any essence, and also because the possibility of the Wife was included in the Fine.

*Ferry and Redings Case.*

718. Two were bound in a Statute to make such assurance as should to devised by the Conusee or his Councell upon Notice; Assurance was devised, and notice thereof given to one of them, who refused; but no Notice was given to the other; It was Resolved, that by the Refusal of one of them, the Statute was forfeited, and should bind both of them.

*Strangeways and Hicks Case.*

719. The Defendant knowing that the Plaintiff was an Infant within age, procured him to enter into a Recognizance of Debt to him for wares bought of him; and for this the Defendant was fined in Star Chamber 100*l.* and Imprisoned.

*Lewes Case.*

720. He being Clark of the Assises in the Countrey of *S.* and hearing his Deputy reading an Indictment of Murther the 31. day of *June*; whereas *June* hath but 30. dayes, and because he did not discover the same to the Justices of Assise before the Tryal of the person: for that cause he was fined in the Starre Chamber 40 *l.* and the Judgment and execution of the party respited.

*Rosses Case.*

721. *A.* levied a Fine to the use of himself for life, the remainder to his Executors; untill they have levied 300 *l.* for the performance of his Will, and dyes. The Executors permit a stranger to enter, who receives greater profits then will pay the 300 *l.* afterwards the Executors enter and make a Lease for years: Resolved, that the estate of the Executors was determined by their own negli-

negligence, and although the words of the Will are, ( they shall have Levied: ) It is intended untill they might conveniently have Levied the 300 l.

723. King Hen. the 8. Mortgaged certain Lands to Citizens of London, upon condition of Redemption by payment of the money by the King to them: They did not demand the money at the Receipt of the Exchequer, which was so found by Office. It was the opinion of the Justices that the King might enter upon the Land; Wherefore the Mortgagees and their Heirs were compelled to compound *de Novo* with the Queen for the Land; and paid ten years purchase, and took new grants from the Queen of the Lands.

*Townsend and King Mills Case.*

723. *Ejectione finis*: The Defendants pleaded, that the Dean and Canons of *Windson* was seised and made a Lease for years, and the Lessee assigned the Terme to the Defendant who was possessed, till the Lessor of the Plaintiff ousted him and disseised the Dean and Canons, and made the Lease to the Plaintiff; The Plaintiff Replyed and confessed the seisin and Lease of the Dean and Canons, and made title to the Terme by the assignment made by the Lessee to his Lessor, before the assignment to the Defendant, and Traversed the disseisin; It was the opinion of the Justices, that the Traverse was not good, because he confessed and avoyded, and also Traversed. *Vide, Heyors Case* before pl. 709.

*Barres Case.*

724. Information in the Exchequer against divers Merchants, some Aliens, some English; After issue, the Aliens prayed trial *per medietatem Lingua*: It was denied by the Court, because the English who were Defendants, could not have that trial.

*Lewen and Coxes Case.*

725. A. seised of Lands in Fee, devised them to his 2. Sons equally and their Heirs: If it was a joynt estate in them, or they were Tenants in Common, was the Question. It was said, the words equally had 2. significations, in the one it referreth to the estate, in the other to the quantity of the Land: It was said, in a Devise of Land to 2. equally, they were joynts; But, if a Devise were to 2. and their Heirs equally or part and part like, it is a Tenancy in Common. At last after long debate, it was adjudged, it was a Tenancy in Common, and so it was affirmed in a Writ of Error in the Exchequer Chamber, upon the opinion of 4. Judges against 3. of them.

*Lovedon*

*Lovebon and Wilmers Case.*

726. *Quare Impedit*; the Case was, L. had 2. Presentations and W. the 3. of Inheritance perpetual: L. presented P. who was Instituted and Inducted; and afterwards in the time of Queen Mary was deprived; because a Married man, wherefore he again presented D. who was Inducted. Afterwards P. was restored, with Declaration that he had good Title: Afterwards P. dyed, W. presented H. L. brought the *Quare Impedit*. It was adjudged for the Plaintiff, because the sentence declaratory for the restitution, made a nullity in the deprivation of P. and upon that P. was restored without new Presentation; and so avoyded the Incumbency of D. and so L. had good Title to present as his second Turne, and W. had no title to present as yet.

727. Upon the Statute of 39 *Elix. Cap. 4.* Of Charitable uses, these poynts were Resolved by the Justices. 1. That although the Bishop of the Diocesse be a Commissioner by the expresse words of the Act; yet it is not necessary, that he be present at the execution of the Commission; but if it be directed to him and others, they may proceed in it without the Bishop, but it must be directed to the Bishop; else it is void. 2. If it be directed *sede vacante*, the Metropolitan is not to be named in it, because he is not Bishop of the Diocesse; and if a Bishop be made before the Execution of the Commission, the same doth not take away the force of the Commission. 3. If the Commissioners decree a Lease or Feoffment to be void, it is void in interest and estate: and if the Lord Chancellor, after decree the estate good, it is again good in interest; but the Chancellor cannot make any decree in it, if the former decree of the Commissioners be not against equity. 4. If a Lease be made in deceit of the Charitable uses, which is assigned to one who hath not notice of it for good and valuable Consideration; The Commissioners have power to decree the Assignment void. 5. The Commissioners may decree the mean profits long time before taken to be repaid by the party his Executors or Administrators; and had received the and misemployed them as well as they may the profits which are to come. 6. The Commissioners cannot by decree establish a Corporation of Churchwardens or others: to take for Charitable uses, but they may Decree Land to a capable body Politique without danger of *Mortmain*, be the Land holden in Capite or not, because the Queen is bound by the Statute. Yet afterward the Justices altered their opinion in one of the poynts, viz. That they could not decree the Lease, or estate void of one who came in without Notice, and upon good Consideration.

*Dunries Case.*

718. The Case shortly put was this; A Countesse being a Widow retained two Chaplains; and afterwards she retained a third Chaplain, which third Chaplain purchased a Dispensation to have two benefices with Cure; his first benefice being of the value of 8*l. per an.* It was Resolved after long Argument, that he was not a person Qualified to take two benefices within the Statute of 21 H. 8. of Pluralities; It was agreed, that a Countesse a Widdow, had power to retain two Chaplains who might purchase Dispensation for plurality; But when she had once retained two, she could not retain a third Chaplain who might purchase Dispensation within the Statute; and therefore in the principal Case the Retainer of Priory being the third Chaplain was not good, nor his dispensation good, and so the Queen for want of Presentation of the Patron and Ordinary had good title to present.

*O'dbery and Grogonds Case.*

719. Debt upon an Obligation, for payment of certain money at a day certain; The Defendant pleaded, that the same was agreed to be paid for the Resignation of a Parson of his Benefices, to the intent another might be presented unto it; and so upon a Symoniacal agreement; The Court held it no plea, for that an averment shall not be, that it was to be paid for other cause then the Obligation expresseth.

*Agor and Candishes Case.*

720. An information was brought, in the Exchequer by an Informer *tam pro Domina Regina quam pro se ipso*: upon the Statute of 8 E. 4. cap. 2. of Retainers; and Judgment was there given, the Informer to have one Moyety of the forfeiture, and the Queen the other Moyety; Error was brought upon the Judgment and assigned for Error, that the Statute limits the party to sue in the Kings Kings Bench and divers other Courts, but speaks not of the Exchequer; It was the opinion of the Justices, that for that cause the Judgment was erroneous as to the Informer only: Then it was moved, that the Judgment might be and stand good for the whole forfeiture to the Queen; for it was said, that a Judgment might be reversed in part, and stand for the other part, and divers Presidents avouched to that purpose; But the Court was of opinion, because the first Judgment gave but a Moyety to the Queen, this Court had not power to give more, nor encrease it; but only had power to assume the Judgment.

*Boddy*

*Boddy and Haygraves Case.*

731. Debt upon a Lease for years was brought against the Administrator, in the *Debet & detinet*; It was adjudged well brought, because the Rent was encreased in the time of the Administrator himself; But it was said, That in all Cases where the Executor, or Administrator brings an Action for a duty Testamentary, it ought to be only in the *Detinet*, because the duty demanded ought to be Assets.

*Layton and Garmonces Case.*

732. A man recovered Debt in *Co. B.* and had Judgment, and he took forth Proceſſe, and the party was taken upon a *Capias in legatum* within the year, after the Judgment upon Proceſſe continued without any discontinuance against him: It was adjudged in this Case, that he should be in Execution at the suit of the party without prayer, because the proceſſe was continued.

*Parker and Sir Ed. Cleeves Case.*

733. The Case was, *A.* seised of three acres of equall value, conveyed by act, executed two of them for the Joynture of his Wife; and the third he conveyed by act executed to the use of such persons, and of such estates as he should declare by his last Will; afterwards he devised the Land to one under whom the Plaintiff claimed: In this Case, it was amongst other poynts Resolved, that he could not devise the Land, because he had Conveyed two parts before by act executed in his life time.

*Sydnam and Courtneys Case.*

734. Sir George Sydnam possessed of divers Leases for years, gave them to his Daughter, who was the Wife of *C.* and to the Heirs of her body, and if she dyed without Issue, that they should remain to such person of *Combe Sydnam*, which *Combe Sydnam* he devised to his Cosen and his Heirs males, in default of the Issue of the body of his daughter; There was a Clause in the Will, that his daughter should not alter the Leases, but that they should remain according to the Will, and made his Daughter his Executrix and dyed; *C.* caused the Daughter to enter upon the Leases as Executrix, and so waive the Legacy, and afterwards the Daughter dyed without Issue; Then *C.* caused an Administration to be taken of the goods of Sir George Sydenham, which was at the Costs of *C.* and then to convey over the Leases to *C.* The Heir of Sir George complained in Chancery, and the Leases decreed unto him, for the two fraudes which were used by *C.* in the Obliging of the Leases; because the Daughter had them upon special trust; and although it was said in this Case, that the entail of the Leases was not good; yet because there was a trust in the Daughter, and expressed in the Will; It was said

said the parties were compellable to execute the Trust, and the Lord Chancellour resembled it to the Case where an Assignment was made of a Lease upon an expresse Trust to one, and the Heirs of his body, and afterwards to another, and the Heirs of his body, and the Assignes were Compelled to execute the Trust, and to suffer the Issues in Tail to take the profits of the Lands.

The Countesse of Warwick's Case.

735. The Case was; A. seised in Fee enfeoffed I. S. who dyed without Issue, having Issue M. his Sister and Heir of the whole blood, and T. of the half blood; their Father being long before attainted of Felony dyed seised, M. entered, and enfeoffed the Countesse. The point was, if the Corruption of the blood of the Father had disabled the Course of discent and Inheritance between the Brother and Sister; *Quere*, not Resolved.

Sprakes Case.

736. A Copyholder makes a Lease for years; Resolved, that the Lessee may maintain *Ejectione firmæ*, though the Lease be not warranted by the Custom.

Fisher and Smith's Case.

737. Note, It was Resolved in this Case; That if a man plead a Bargain and Sale, in which no consideration of money is expressed, there it must be averred that it was for money, and the words for divers considerations will not imply money; but if the deed be for a Competent sum of money, though the certainty of the sum be not expressed, it is good enough.

Woolley and Charwell's Case.

738. A Statute Merchant was by *Mutuum* removed out of the Chancery in C. B. an execution awarded there *super tenore Recordi*. Resolved 1. That Error lyes in B. R. although the Original be in the Chancery, and the Execution in C. B. 2. Resolved, that in that Case the Conusor cannot alledge for Error, that the Statute wants one of the Seales shew ought to be to it; because he hath admitted the same in C. B.

739. Debt in B. R. upon *Mutuum* for 50 l. the Defendant pleaded an Attachment in London, and had found pledges; and because the pledges were not put in at the day of the last default, but at another day, it was holden No plea, and Judgment was for the Plaintiff.

Washington and Burgess's Case.

740. It was holden by the Justices, that if one be bounden to make such assurance of all his Land, that another will devise and require if it be to be done at the Costs of the Devisor; he may devise one Assurance of one part, and another of another part of the

Land; but if be at the Costs of the other, he can devise but a joynt assurance for the whole Land.

*Gage and Topers Case.*

741. Resolved in this Case; If the Writ of Covenant upon which a fine is lewyed, be returned before the date, it is Error because it is an Original Writ, and not amendable by any Statute.

*Stroughborough and Biggins Case.*

742. In Appeal by a Woman of the death of her Husband of Murder; the Defendant is found guilty of Manslaughter; It was holden, that a general pardon could not pardon the burning of the hand, because it is at the suit of the party. *Visd Co. 6. p.* the Case Reported to be adjudged contrary.

743. It was holden by the Justices, that in a *scire fac.* to have Execution of a Fine, it is no plea, that there are other Terre-Tenants not named in the Writ; otherwise it is upon a *scire fac.* to have Execution of a Recognizance.

*Bennes and Edwards Case.*

744. The Patron of the Advowson, granted the next Avoydance to B. and after granted an other next Avoydance to R. who first presented, and the Bishop refused; the B. presented, and the Bishop refused his Clerk, also; R. brought *duplex Querela* against the Bishop before the Metropolitan against B. and upon default his Clerk was Inducted by the Metropolitan; but depending the *duplex Querela* B. recovered against the Bishops Ordinary in a *Quare Impedit*, and his Clerk was Inducted and inducted, and he took the profits of the Glebe Lands, which were sowed by the Clerk of R. It was Resolved in this Case; that the Clerk of R. being in upon the Judgment in the *duplex Querela*; the Clerk who was in upon the Recovery in the *Quare Impedit*, could not oust the Clerk of R. without a *scire facias* first brought.

*Foxley and Ansleys Case.*

745. The Bayliff of the Queens Mannor, which had waives and estrays appertenant, took goods, essoynd by a Felon, and relinquished in the Mannor, and seased them for the use of the Queen; and in Trover brought against him, prayed in aide of the Queen. Resolved the Aide not grantable, being an action transitory and not local.

*James and Rudledges Case.*

746. Words, viz. *Hang him, he is full of the Pox, I marvel you will eat or drinke with him*; adjudged not Actionable; for it may be the small Pox, and not to defame the party, but to Counsell his friend.

747. The





to all Prescription. 2. Resolved, a man may prescribe for Toll Traverse, because it is a passage over his own freehold; but not for Toll thorough. 3. In this Case, it was adjudged against the Defendant, because it was not shewed, that the Sheep were passing thorough the Town before he took the distress; otherwise it doth not lye with the Prescription.

753. *Warner and his Wife and Abingtons Case.* Debt upon an Obligation by Husband and Wife; the Defendant pleaded the Wife had another Husband living. The Plaintiff said the Wife ad eam nubile; disagreed to the former marriage. It was said by Popham, if she marry another Husband infra annos nubile, it is a disagreement to the first marriage; a fortiori where she cohabits with the second Husband after years of Consensus, adjudged for the Plaintiff.

754. *The Case was, A. and B. levied a Fine of Land to J. S. with a Render of rent, of 5 l. to B. yearly with a Clause of distress; the Remainder of the Land to A. and his Heirs. J. S. dyed, his Son distrained for the Rent; it was adjudged against the Avowant for the Rent in a Reply brought; because the limiting over of the Remainder of the Land over, was an Extinguishment of the Rent.*

#### *Dayman and Hardis Case.*

755. *The Case long pur was shortly this. The Company of Merchant Taylors of London, having power by Charter to make Ordinances for the better Rule and Government of the said Company, made an Order, that every Brother of the same Society, who should put any Cloth to be dressed by any Clothworker not being a Brother of the same Society, should expose one half of his Cloth to be dressed so some Brother of the Company, upon pain of forfeiting 10 l. and to distress for it. This Case was very long and very Learnedly argued, and the Book at Large: At last it was Resolved, That that Ordinance, although it had the Warrant of a Charter, was against the Common Law, because it was against the Liberty of the Subject; for every Subject by the Law hath Freedom and Liberty to put his Cloth to be dressed by what Clothworker he pleases, and cannot be restrained to any persons: for that in fact would be a Monopoly.*

756. *Griffith and Holmes Case.*

Debt upon Obligation; the Condition was, if the Obligor his Heirs and assigns shall and may Lawfully hold and enjoy a Messuage, &c. without the City, &c. of the Obligor or his Heirs, or of every other person discharged, or upon reasonable request

saved harmless by the said Obligor from all former guifts, &c. the Defendant said, no request was made to save him harmless: It was adjudged for the Plaintiff, because the Defendant hath not answered to all the Condition, viz. to the enjoying of the Land, and there were 2. Conditions, viz. the enjoying, and the saving harmless.

**Chenley and Humble Case.**

757. A Covenant to make a Feoffment within a year, to the use of himself for life, the Remainder to H. his younger Son and the Heirs males of his body, which remain over, and if he did not make the Feoffment, he Covenanted for those uses, for the Continuance of the Land in his name and Blood. Proviso, if H. or any Heir male make a Feoffment or Levy a Fine, his estate to cease as if he were dead, and then the Feoffers to stand seised to the use of such person to whom the Land should Remain: No Feoffment was made within the year: A. dyed, H. the Son levied a Fine to the Defendant. Resolved 1. That the Proviso to cease the estate, was repugnant upon his estate for life. 2. That his estate could not cease when he had levied a Fine, because then he had no estate. 3. That the Feoffees and their Heirs, could not stand seised to the use of the person next in descent or Remainder, because no Feoffment was ever made.

**Nevel and Sydenhams Case.**

758. In *valore Maritagii*: The opinion of the Justices seemed to be That a tender was not material, but that the value of the marriage was due without a Tender.

**Atkins Case.**

759. The Father devised his Land to his Son and the Heirs of his body, and further, I will that after the decease of my Son John, the Land shall remain to G. Son of John: Adjudged, John had Tail, and his Wife should be endowed.

**Carter and Cleyntes Case.**

760. All-Soules Colledge made a void Lease by the Statute of 13 Eliz. because no Rent was reserved: It was a Lease only to try title and Judgment: Error was brought and assigned, after that the Lease was void: The Judgment was affirmed, because the party did not plead the Statute, for otherwise the Judges are bound to take Notice of it.

**Clarke and Doyes Case.**

761. A man devised Lands to his daughter for life; And if she marry after my death, and have issue of her body, then I will that her Heir after my Daughters death shall have the Land, and to the Heirs of their bodies begotten, the Remainder in Fee to a stranger

**Stronger**: It was adjudged she had not tail but only for Life, and the Inheritance in his Heir by purchase; and therefore in this case it was Resolved, the Husband of the wife could not be Tenant by the Curtesy.

**Deacon and Marshes Case.**

**762.** A seized in Fee of a house, and possessed of Goods, Devised in these words; *The best of my Goods, Lands and Moveables, after my Decease, &c. To my three children, B. C. and D. equally to be divided amongst them*: Adjudged they had but an Estate for Life in the House, and that they were Tenants in Common of it, and not Joynt-Tenants.

**Smith and Mills Case.**

**763.** Adjudged that a Sale made of his goods by a Bankrupt after a Commission of Bankrupt is awarded, is utterly void.

**Gibson and Martin's Case.**

**764.** A. devised certain Land to B. and C. his wife, who was the daughter of A. upon condition that they within 10. years should give so much of the Land as was of the value of 100 l. per ann. to E. F. and that he should find a Preacher in such a place; and if they failed, their Estate to cease; and that then his Executors should have the Land to them and their Heirs, upon trust and confidence that they should stand seized to the same uses. B. within the 10. years made a writing of Gift, Grant, and Confirmation, but no Livery nor Enrolment of it till after the 10. years. The Executors refused to take upon them the Execution of the Will; yet it was adjudged, they should take the Land by the Devise, and that the words, *upon Trust and Confidence*, made not a condition to their Estates.

**Arundell's Case.**

**765.** In Indictment of Murder; the Murder was alledged to be *apud Civitatem Westm. in com. Midd. in Parochia St. Margare.* and for Tryal a Jury was returned *de Vicaria Civitatis Westm.* Resolved, the Tryal not good, for the Vicar ought to have bin of the Parish, and not of the city; for a Parish is to be intended more certain than a city; and when a Parish is alledged to be in a city, the Vicar shall come out of the Parish.

**Alderton and Mass Case.**

**766.** Assumpsit: In consideration the Plaintiff would give his good Will and furtherance to the Marriage, the Defendant promised after the Marriage had, to give him 10 l. he alledged he had given his good Will, and that he did further so. But did not show particularly how; yet the Court held it to be a good consideration, and adjudged the Action did lie.

*Savage and Brookes Case.*

767. Upon an Indictment of Murder; It was Resolved by the Justices, that the Queen could not challenge Peremptorie without shewing cause of her challenge.

768. Note. It was Resolved by the Justices, That if a man buy Corn, and converts it to meal, and afterwards sells it, it is not an ingrossing within the Statute of 5. E. 6.

*Staffords Case.*

769. Debt upon Obligation: the Condition to make such further assurance as the Council of the Obligee shall Devise. The Obligor comes to the Obligee, and shews his Council had advised him to make to the Obligee a Lease for years, which he required him to do, and he refused. It was adjudged the Obligation was forfeited; otherwise if it were to make such assurance as the Council should devise, for then the Council ought to draw and engross it ready to be sealed.

*Plaine and Binds Case.*

770. Assumpsit 11. Septemb. to deliver certain goods to him, if no claime be made to them before 14. September, and alledged no claime was made post 11. diem usque 14. Septemb. It was said in stay of Judgment that the Declaration ought to have been that no claim was made after the Assumpsit, until the 14. day, and not post 11. diem. The Court adjudged the Declaration good, because the especial matter upon the division of the day, ought to come on the other side, otherwise it shall not be intended.

*Bullock and Bibleys Case.*

771. A Woman Copyholder in Fee took Husband, who without his Wife, surrendered to the use of a Stranger, who was admitted, and surrendered to the use of D. the Defendant, who was admitted; the Husband died, the wife survived and died; the Heir before admittance made a Lease to trie the Title: It was adjudged that the Surrender of the Husband alone made no discontinuance of the Copyhold of the wife. 2. Resolved that the Lease was good before Admittance; otherwise it was of a Surrender before Admittance.

*Gogles and Grimes Case.*

772. An Infant surrendered Land which was Copyhold to the use of a Stranger, who was admitted: It was adjudged that the Infant at his full age might enter, because it was no bar nor discontinuance.

## Ford and Hobbs Case.

773. *A.* let the Mannor of *D.* to *H.* for 57. years, rendring yearly to *D.* *G.* 10 *L.* and he was bound in an Oblige to *A.* to pay the said Rent to *D.* *G.* if the so long lived, and the said *H.* or his Assignes should or might so long enjoy the Premises. In Debt by the Executors of *A.* against *H.* he pleaded that after the Lease to him, he himself surrendered the Lease to *A.* which he accepted, and that till the Surrender no Rent was unpaid. It was adjudged for the Plaintiff, because the acceptance of the Surrender was no conclusion against the collateral payment to a Stranger, and *H.* but for his own Act might have enjoyed the Land still.

## Savage and Bechams Case.

774. In Action upon the case for an Escape against the Prisoner brought by the Plaintiff Sheriff: It was Resolved that upon a voluntary escape the Sheriff should not maintain an Action against the Prisoner, but otherwise upon a negligent escape.

## West and Blackwells Case.

775. *A.* Outlawed after Judgment, was taken upon the *Capias utlagatum*, and afterwards escaped. Resolved that he was not in Execution for the party without prayer.

## Williams and Beables Case.

776. Debt upon an Obligation, after Verdict and Judgment it was assigned for Error, that the Title of the Original was before the day of payment in the Condition. It was holden Error, and the Judgment for that cause reversed.

## Wells and Demmes Case.

777. Upon a Recovery in Debt of 400 *L.* upon a *Fieri fac.* 100 *L.* was levied and returned: Afterwards a *Capias ad satisfaciend.* issued for the whole 400 *L.* It was the opinion of the Court, it ought to issue forth; but 300 *L.* and the Judgment for Execution was reversed.

## My and Middleton's Case.

778. After Debt brought, the Plaintiff attached in London a debt due by another man to the Defendant, and had Judgment to recover: Adjudged a good bar to the Action for so much.

## Bustin and Edmonds Case.

779. It was adjudged in this Case, That a Rent payable off the Land upon Cesser of an Estate ought to be demanded where no entry may be.

## Hughton and Princes Case.

780. Resolved, Tythes shall not be paid of Turkes nor their Eggs, nor of tame Patridges or Pheasants, *quia fera natura.*

## Bewick and Cudens Case.

781. It was adjudged in this case, That the Feoffee shall have Action upon the case for a Nuisance continued, though it was created before his time.

## Shurington and Fleetwood's Case.

782. It was Resolved if a Person Libells for Tythes, and a Prohibition is granted, and after he libelleth for the Tythes of another year, the first Suit not being determined, an Attachment upon Prohibition lieth against him.

## Hall and Vaughan's Case.

783. If the Jurors eat and drink at their own proper costs before Verdict, after their departure from the Jury it is fineable only, but it shall not make their Verdict void.

## Adams and Albons Case.

784. Resolved that if a *Vener facies* bears date the day, it is returnable; it is amendable by the Roll.

## Gregory and Blashfields Case.

785. An Action upon the Statute of 4. and 5. Philip and Mary for using the Trade of a Clothier, not having bin bound an Apprentice for seven years, was brought by Plaintiff in the Court of Exchequer, and Judgment there: The Judgment was reversed, because first it ought to be by Original, or Informations, and Secondly because it ought to be brought in the Courts of Record at Westminster, and not in Borough Courts.

## Parrot and Wilson's Case.

786. Conspiracy: The Defendant pleaded his goods were feloniously Stollen, and he found them in the possession of the Plaintiff, for which he Indicted him, and gave evidence against him, and upon the Tryal the Plaintiff was acquitted, and traversed the Conspiracy *aliter vel alio modo*: It was adjudged a good Justification because the finding of the goods in his possession, was a sufficient cause of Suspicion.

## Marrow and Tarpin's Case.

787. Debt against two Administrators for Rent behind after the death of the Intestate, they pleaded that before the Rent behind, one of the Administrators assigned all his Interest to J. S. of which the Plaintiff had notice and accepted of the Rent by the hands of the Assignee, before the day in which the Rent in arrears was due. It was Resolved that the privity of contract as to the Action of debt, was determined by the act of the Lessee, and therefore the action of Debt after the Assignment did not lie against the Administrator.

Smith

Smith and Johnson's Case.

788. Error of a Judgment in Action upon Assumpsit in the Court of  
 Rading. The certificate was *Plita et al. cur. Domine Regine Bur-*  
*gisui de Rading tenend. per consuetudinem et Libertat. Major et Bur-*  
*gensibus concess.* without saying *per consuetudinem ex antiquo usitat.* or  
 alleging by what person the Liberties were granted, and for this  
 cause the Judgment was reversed.

789. *Robert and Corbett's Case.*

A seised of Lands for real affection, covenanted to stand  
 seised to the use of himself for Life, and after to the use of R. and  
 the Heirs Males of his Body, the Remainder to G. and the Heirs  
 Males of his Body; Provided, if R. or any Heir Male of his Body,  
 shall intend or go about any act to cut off the Estate tail, then it shall  
 be lawful for him that first shall enter. A. died. R. suffered a common  
 Recovery. Resolved the Proviso was repugnant to the Estate tail, and  
 that the Cesser of the Estate tail as if the party had bin dead, was  
 impossible, and the going about it, such a secret thing, that an Issue  
 cannot be upon it.

790. *Gray Marshal, and Marshals Case.*

A. levied a Fine of five yard Land to the use of himself for  
 Life, the Remainder to the use of his eldest Son, who was the Plain-  
 tiff's husband, and the Plaintiff, and the Heirs of the Body of the  
 Husband; Proviso if the Husband died, living A. his Father, then  
 G. the Plaintiff his wife should have one yard Land and a half, for  
 her Life in possession, without shewing which Land; the Husband  
 died. The Wife entered and elected one yard Land and a half, A. en-  
 tered upon her. Resolved that the use for the Life of the Father did  
 cease in it without entry into the Land of the Wife, and that she  
 should have the Election.

791. *The Lady Burgh's Case.*

A. seised of Land bargained and sold the same to B. and C.  
 with power of Revocation by tender of 20 s. to them or one of  
 them in the Hall of the Dean and Chapter of Westminster, in Westmin-  
 ster. A. tendered the 20 s. in the Hall, none of the Bargainees  
 being present, nor having any notice of it. Afterwards A. covenanted  
 to stand seised to the use of J. S. her Nephew. It was Resolved in  
 this case, that the tender of the 20 s. was no performance, of the  
 Condition to avoid the Estate. 2. That the conveyance by Cove-  
 nant to stand Seisor for consanguinity, should make void the former  
 conveyance containing the power of Revocation; wherefore it was  
 adjudged for the Plaintiff.



*Parson and Vicar's Case.*

792. The Town of Sandwich did prescribe, that if any Goods of any Freeman of that Town came to the hands of a Freeman and Citizen of London, the Mayor of Sandwich, &c. had used to write to the Mayor &c. of London, to take good order for restitution, and if they refused and did not return the Answer to the Mayor of Sandwich, &c. and did not make Restitution within 15. days, then they of S. used to detain the Body of any Londoner which they should find there, till restitution was made: It was Resolved by all the Justices, that such a Prescription was not good.

*Diggs' Case.*  
793. The case is very long but this in effect: A man seized of Lands in Fee, for diverse considerations covenanted to stand seized thereof to the use of himself for Life, and after to the use of his Son in tail; Provided that at any time during his Life with consent of divers by Deed indented, to be enrolled in any Court of the King, to revoke the said uses and estates, and to limit new uses; and afterwards by Deed indented, enrolled in the Chancery, he revokes the uses in part of the Land, and limits the same to him and his Heirs; and afterwards by another Deed he declares that from the time of the enrollment of the Deed in the Chancery, that all the first uses in the first Indenture shall be void, and that the Land shall be to the use of himself in Fee; and after he levies a Fine of All the Land, and after the Deed is enrolled in the Chancery. In this case these points were Resolved. 1. That he might revoke part at one time, and part at another time, but he could revoke one part but once. 2. That where the Revocation is to be by Deed Indented to be enrolled, it is as much as to say by Deed Indented, Enrolled, For it is no Revocation till enrollment. 3. That there was no complete and perfect Revocation till the Deed was enrolled in the Chancery. 4. That the Fine before the Enrollment, had extinguished the power of Revocation. 5. If the Fine had not been levied, then by the Revocation the ancient Uses had bin destroyed without entry or claim, because he himself was Tenant for Life, and he could not enter, and Acts of Revocation are as strong as a claim. 6. That by the same conveyance, the ancient Uses might be recovered, their Uses might be limited.

*Casard and Wingate's Case.*  
794. A Layman presented to a Benefice before the Statute of 1. Eliz. made a Lease for 50. years, which was confirmed by the Patron and Ordinary; After the Statute his Successor became bound in an Obligation that the Lessee should enjoy the Term; and after he was absent from his Living 80. days. It was adjudged the Obligation



gation was not void by the Statute of 14. Edw. because the Lease for years was good; and the Bond for enjoining it, which the Successor cannot avoid.

795. Resolved by the Justices of the Kings Bench, that if the Sheriff hath a *capias* against one to find Sureties for the good behaviour, he may break the House, and enter and arrest the party, as well as he may do upon a *capias attagatum*.

*Faltons Case.*

796. He was indicted for Recusancy: That being of the age of 16. years and more, *non accessit ad Ecclesiam, &c.* by the space of 6. months. It was said the Indictment was not good, for *Existentis etatis 16. annorum*, shall be referred to the time of absence from the Church, and not to the time of the Indictment; but the Court held the Indictment to be good.

*Longmans Case.*

797. A man sued in the Spiritual Court for calling him Goose, Woodcock, he being a Clerk. A Prohibition was awarded; and in this case it was said, the High Commissioners could not hold Plea for slanderous words spoken of a Clerk, but for laying of violent hands on him they might.

*Binghams Case.*

798. The case was this; Grand-father, Father, and Son; the Grand-father held the Mannor of D. of B. as of his Mannor of S. by Knight Service, and levied a Fine thereof to the use of himself for Life, the remainder to the use of the Father in tail, and after to the use of the Right Heirs of the Grand-father; the Father died, his Son within age. B. the Lord suffered a Recovery of his Mannor of S. unto the use of himself and his Wife in tail, the Remainder to the use of C. and his wife in tail, the Remainder to the Right Heirs of B. B. and his Wife died without Issue, C. entred into that Mannor; the Grand-father died, his Wife died; the Son entred and made a Lease for years: It was Resolved in this case, that as long as the Grand-father lived, no Wardship of the body or Land was due, because the Reversion remained in himself, and the mean man could not be in ward during the Life of the particular Tenant for Life; and in case of a Subject, as long as the Reversion remained in the Donor, or his Heir, the Issue in tail, should not be in ward to the Lord Paramount, when the Son in remainder in tail died, his Heir within age. Resolved that a man shall never have the Wardship of the Heir, when the Land was never in his Fee or Seignory of him or any of his Ancestors, at the time of the death of the Tenant.

*Bullock*

**1799.** The case upon the matter was shortly this: A man conveyed Land to the use of himself for Life, and after to the use of his wife and his blood, with a future power of Revocation, as after such a Feast, and afterwards and before the power of Revocation began, he for valuable consideration sold the Land to one and his Heirs. It was Resolved, that this bargain and sale is within the Remedy of the Statute of 27. Ed. 2. of Fraudulent Conveyances: And the Act will not that such voluntary conveyance originally subject to a power of Revocation, should stand good against a Purchaser *bona fide*, for valuable consideration, though the power be not exercised.

**1800.** The case was: A Parson sued a Copyholder for Tythes arising upon his Copyhold: he prayed a Prohibition, and suggested that the Bishop of W. was Lord of the Manors, and that he and his Predecessors time out of mind, were for them, their Farmers and Tenants, had bin discharged of Tythes arising upon the Manors, and that he had bin a Copyholder of the Manors, and presided in his Lord: It was the opinion of the Justices in this case, that although there is a Prescription upon a Prescription one in the Copyholder so make the estate good, the other in the Bishop to make the discharge good; yet a Prohibition lyeth for the Prescription in the Lord of Right, of necessity; and common Intendment proceeds the Prescription in the copyhold estate, and the discharge of the Tythes in the Lord, shall go to the benefit of the Copyholder.

**Blake and Allen Case.**

**801.** B. was bounden to A. in an Obligation of an 100 l. for the true behaviour of his Son, he being an Apprentice to A. After the sealing and delivery of the Bond, razed out the word *Liore*, and inserted the word *Male*: It was the opinion of the Justices it was not a Forgery punishable, because he made his own Bond void, and it was not a prejudice to any but to himself.

**802.** Two Executors made Partition of their Testators Specialties, and then one of them did release to the Debtor an Obligation, which did appertain to the part of the other, the Debtor having notice of the Partition betwixt them; the other sued in Chancery for Release, but the Chancery would not relieve him, but if the Release was obtained by Covin for a less Sum, then the Debt was, there is no holden the Debtor should satisfy the Overplus.

**803.** It was agreed by the Justices, that the Hundred is not chargeable with the escape of the Felons, nor to pay the Robbery, if the Robbery be done in an House, nor if it be a Robbery in the Highway in the Night.

804. Note : It was Resolved 29. Feb. 43. *Eliz.* by the Justices upon the Arraignment of the Earl of *Essex* 1601. That When the Queen sent the Lord Keeper and others of her Council to him; com- manding him to disperse the armed persons which he had in his house; and to come to her; and he refused so to do, and kept the armed men in his house, that that was Treason. 2. That when he went with a Troop of Cavalrie and others into the city of London, and there prayed aid of the Citizens to assist him in defence of his Life; and to go with him to the Court; so as he might be of power to remove his Enemies which attended upon the Queen, that that was Treason. 3. That the Fact in London was actual Rebellion, although he did not intend hurt to the Queen. 4. That the adherence of the Earl of *Sarum* to the Earl of *Essex*, although he did not know of any such purpose then of a private Quarrel which the Earl of *Essex* had against certain of the Queens Servants, was also Treason in himself. 5. That all those who went with the Earl out of *Essex* to his house in London, whether they knew his intent or not, were Traitors; although they departed by Proclamation; but those who upon a sudden adhered to him in London, and departed for soon as Proclamation was made, they were within the Queens Grace of pardon by the Proclamation.

*Holland, Jackson, and Ogden Case.*

805. Error was brought to reverse a Recovery, and a Scire Facias issued against K. and other Terre-Tenants, depending which a Writ of Eftrempment was awarded against the Terre-Tenants, and Resolved it did well lye.

*Dutton and Hamonds Case.*

806. It was Resolved by the Justices in this case, that if the Lord demand an excessive Fine of his Copyholder, and he refuse to pay it, it is no forfeiture; otherwise where it is a reasonable Fine, and the Court and Jury shall be Judges of the reasonableness of it; But if a Fine be certain, the Tenant is to bring it with him to Court, and to pay it before admittance, and if he be not ready to pay it, it is a forfeiture.

*Gambrell and Grassons Case.*

807. In Trover and Commission, it was found for the Plaintiff; It was moved in stay of judgment, that the Distraints with the *Nisi prius* bore the same date with the *Veneris facies*. It was the Resolution of the Court, that it should be amended; for it was aided by the Statute of 5. H. 8.

*Higgins*

Higgins and Spicers Case.

808. A *Ventre facias* was awarded to the Coroners, *in quod*; B. who was one of the Coroners, *se non istummar*, because he was the Servant of R. who was Sheriff: It was said the same was no cause of Challenge, but the Court conceived it was, because confessed. However it was but a misconverting of process, which was aided by the Statute.

Hall and Jones Case.

809. Action was brought upon the case for slanderous words in a Court of Pipowders; The Stile of the Court was *Curia pedis pulverizati ratione Mercati, &c.* *Secundum consuetudinem Civitatis*: It was adjudged there for the Plaintiff, and Error brought and Assigned, that a Court of Pipowders doth not belong to a Market, but to a Faire: The Court held that by custom of a city or place, it might be to a Market: Resolved, that an Action upon the case for slanderous words did not lie in a Court of Pipowders, and for that cause the Judgment was reversed.

The Countess of Warwick, Arundell, and Davies Cases.

810. Action upon the case against two, the one pleaded to Issue, the other demurred; upon the Demurrer, the Plaintiff had Judgment, and a Writ of enquire of Damages against him alone, and the Defendant relinquished the other Issue. It was the opinion of the Court, that he might relinquish against him, and have Judgment and execution of the damages against the other only.

Sir Gerouse Clifton and Chancellors Cases.

811. In Trover and Conversion of Jewels; The Defendant pleaded that a Stranger was possessed of the Jewels and sold them to him in his shop in Bristol, he being a Gold-Smith, and because he did not say that the Sale was in *pleno Mercatu*, nor aver'd it was his shop in which he used the Trade of a Gold-Smith. It was adjudged for the Plaintiff, and in this case it was agreed, that the King cannot grant to one that his Shop shall be a Market to vend to bind Strangers, because it is against the Law.

Tudd and Wrights Case.

812. In debt to perform an Accord; the breach was assigned of a thing out of the Submission, and Issue being joyned, the Plaintiff at the *Nisi prius* was Nonsuit: Then the Judgment given upon the insufficient Plea is not upon the Nonsuit; It was holden the Defendant should have costs for the unjust vexation.

Garven and Rents Case.

813. In Replevin; the case was A. granted a Rent to B. and his Heirs for the Lives of J. S. B. devised the Rent to J. D. The Rent was behind: J. S. died; A. D. avowed for the Rent: It was

Resolve

Resolved in this Case, that by the Common Law such a Rent was not devisable; but by the Statute of 32 and 34 H. 8; it was thought but a Freehold devisable. 2. Agreed, that no general Occupant could be of it; and they held, that if it be devisable by Custom, the devise did prevent the Occupancy.

814. It was Decreed in Chancery in this Case; That the Ten-  
re-Tenant should be compelled to pay a Rent sick devised by  
Will out of Land, notwithstanding no seisin was had of  
it.

#### Six Charles Rawleighs Case.

815. A. seised of *Cusson Park*, executed an estate of it to the use  
of himself for life; and to the use of D. his Wife for life, so long  
as she should be effectually ready to demise it to his Heir at 50 L.  
Rent; when she should not dwell on it her self, and for so long as  
she should not dwell upon it. A. dyed, B. his Son entered, because  
D. did not dwell upon it, but removed with *Sir Charles Rawleigh*  
her Husband into Dorset Street, and did not demise the Park to him  
50 L. Rent; There were many points in this Case, but none of  
them particularly Resolved. 1. If the Husband D. had taken, was  
bound to performe the demise. 2. If her taking of Husband had  
disabled her to make the demise. 3. If she being a Feme Covert  
had made the demise, which was void in Law, if she had performed the  
Condition. 4. If the Husband and Wife had joyntly in's demise; if  
that had been a performance of the Condition, the words exten-  
ding to her alone. 5. If the Heir A. ought to demand the demise,  
or D. the Wife ought to affect it. 6. If the demand ought to be  
by word; or by tender of a Writing with a Reservation of 50 L.  
Rent.

816. It was agreed in this Case, That the Queens Attorney might  
have an Information in the Star Chamber against a Receiver of the  
Queens Rent, for a perjury supposed in advantage of the Queen, and  
so might any other person allege perjury in an Oath for the advan-  
tage of the Queen if he be greiv'd by it. 2. That perjury is assign-  
able as an Inquest of Office, as a Misdemeanor, but not upon the  
Statute of 9 Eliz.

817. It was holden in Star Chamber, in this Case by the Justices,  
That a Libeller is punishable there, although that the matter of  
the Libell be true; and so is he who disperseth Libells, although  
he doth not know the effect of them, nor ever heard them  
read.

818. Note,

818. Note, it was said and agreed, That if one exhibits an Information in the Star Chamber, but as a Common Informer for a Misdemeanor, although he hath not any particular grief, and dyeth, his Executor or administrator shall not Revive it by a Bill of Reviver; but the Kings Attorney may Revive the Bill.

*Caynes Case.*

819. A Justice of Peace was censured in the Star Chamber, because he going to a place to view Riotors, and to remove the force, and the offenders being gone before his coming, he was requested to go to the House where they were, and he refused to do it.

*Gellibrand and Habards Case.*

820. Gellibrand was sentenced in the Star Chamber for levying a Fine by the name of *Gellibrand*, who was then beyond the Seas, affirming himself to be the same person, and the sentence of the Court further was, that the Fine so levied by him should be vacated upon Record.

821. The Case was; King Hen. 3. Anno 41. of his Reign by Letters Patents did recite, whereas R. N. held of him by money, Rent, Corne, Cheese and Soccage Tenure, he granted to him that from thence forth he should hold by 4 s. Rent, and by Knights service for all services; The point was, if this acceptance of the Patent, should make a Tenure by Knight service. It was the opinion of the Justices that it did not, unless the estate of the Land was then in the King, because the King might discharge the services either in part or in all, by his Patent, but could not reserve services of a new nature, where he did not give the Land.

*Anthony Mildmay and Mildmays Case.*

822. Sir Walter Mildmay the Father in consideration of Love and Affection, Covenanted to stand seised of Lands to the use of himself for life without impeachment of waste, the remainder to A. his Son, and the Heirs males of his body, the remainder to H. and the Heirs males of his body. Provided if any of the said partes shall go about to resolve, determine, or devise to do any act, or shall consent to any act whereby the estates of them in remainder shall be aliened, discontinued, barred, &c. then his remainder shall cease as if he were naturally dead. The Father dyed, A. entered and suffered a Common Recovery. Resolved, that the Proviso was against Law, and an estate Tail could not cease, as if Tenant in Tail were naturally dead.

*Wells and Fentons Case.*

822. *A.* seised in Fee, executed an estate to the use of himself and his Wife for life, the remainder to such Woman as he should afterward marry, which should survive him: the remainder to *B.* his Son in Tail; His Wife dyed, he took another Wife, and they both (reciting the former Conveyance) granted the Lands to *J. S.* for 40. years by Fine; if *A.* and his Wife or any of them should so long live. Afterwards *A.* dyed, the Wife entred; It was the opinion of the Court, That the Wife was barred of the possibility by Estoppel, and yet they agreed the Case, that if a Lease be made for life, the remainder to the right Heir of *J. S.* and the Heir Leveys a fine in the life of his Father, the same shall not bar the possibility.

*Peck and Channells Case.*

823. *A.* seised in Fee, devised the same to a Woman for life, the Remainder in Tail to *B.* his Cosen, the Remainder to his right Heirs; the Woman and *B.* entermarried and levied a Fine with Proclamation, with a Render to them and the Heirs of the body of the Husband; and after they suffered a Common Recovery of the Husband and his Heirs, who enteoffed the Defendant, and dyed without Issue. Resolved the Fine did not make any discontinuance, because the Conusor was not seised in Tail in possession, but in the right of his Wife, and the Recovery did not bar the Issue in Tail, nor the Remainder, because the Tenant was in of another estate, in whom the recompence was, and not of the estate Tail anciently devised.

*Rayman and Golds Case.*

824. A man possessed of a Terme for 80. years, devised that after the death of his Wife, who he made his Executrix, his two Sons *B.* and *C.* shall have the whole profit of my Farm, and the longest liver of them shall appoint, who shall have the residue of the years which shall be remaining at the time. Resolved 1. That the Wife had not any estate for life by Implication. 2. Resolved, That the devise of the profits was a devise of the Terme it self. 3. Resolved, That the Termor could not devise to one for life, with the Remainder of the years to another, which should be behind at the time of the death of the first devisee; But the Court was of opinion, That if a Termor devise, that after the death of a stranger *I. S.* shall have the Land, for so many years as shall be then to come; the same is a good devise, because he might have such a demise in his life.



Swan and Gaterlands Case.

825. A Woman had two Sons by two several Husbands; the Son of the second Husband being within age, the Uncle after the death of the Woman claimed the Gardianship in Socage, and also the Brother by the half blood; It was adjudged, the Gardianship did belong to the Brother of the half blood, and not to the Uncle: *Quere*, if the Brother be within the age of 14. years.

Specket and Shores Case.

826. Debt to performe all Covenants in an Indenture of Lease, where a Rent was reserved; The action will not lye, unless there be a demand of the Rent; otherwise if there be an expresse Covenant to pay the Rent.

Robins Case.

827. Two Executors are in Suit which of them is the true Executor; Resolved, that *pendente Lite*, the Ordinary cannot Commit Administration.

Cotton and Wales Case.

828. Debt upon Obligation; the Defendant said, the Plaintiff was Sheriff, and upon the Arrest of the prisoner, took a Bond of the Defendant for his enlargement, and said, that by the Statute of 31 H. 8. he ought to take Bond of sufficient persons, and said; he the Defendant was not a sufficient person: The Court held the plea not good; for the Sheriff is the Judge of the sufficiency, and it is to his own damage, he being to be amerced, if he bring not in the body.

Mellow and Mays Case.

829. Husband and Wife took a Lease for their lives, and after by a new Indenture they took a new Lease to them two, and their Sons, *Habend.* to them three, *à die datus Indentura pro termino vitæ eorum & cujuslibet ipsorum post alterum diutius viventi*, with a Letter of Attorney for livery; the Indenture was sealed and delivered the day of the date, and livery was made a Week after; the Wife dyed, the Son and Husband entered; In this Case Resolved, that the acceptance of the second Lease to begin *à die datus* was a surrender. 2. That the Lease was good to begin *à die datus*, because livery was executed after the day of the date. 3. That the taking of a new Lease of the Woman being Covert, was a surrender of her estate during the Coverture. 4. That the Lessees took jointly, and not by way of Remainder.

Chard and Wvats Case.

830. The Case was; A Copyholder in Fee surrendered to the use of his Will, and having a Daughter born, and his Wife with child, he devised by Will part of the Land to his Son or Daughter with which



his Wife went, & *hereditus suis legitime procreatis*, and the residue he devised to his Daughter born, to have to her and the fruit of her body, and if she dye without fruit of her body, the same shall Remain to the Child in the Mothers belly; and if both dye without fruit, then *I. S.* should sell the Land, and Willed the one Sister to be Heir to the other: The Wife of the devisor entred and was admitted and had a Daughter which after dyed; The Mother took Husband, and they surrendered: It was Resolved in this Case, that it was a Fee-Tail in the Daughter after born. 2. Resolved, that one in *ventre sa mere* could not take an estate in possession by purchase, but as this Case, she might take a Remainder. 3. The point was, if the surrender was a Discontinuance; In that point the Court was divided in opinion: But they agreed, that a Copyhold might be entailed by custom.

*M. viles Case.*

831. The Case was; the Husband seized in Fee, levied a Fine and afterward *Maria* was Out-lawed of Treason; the Conussee conveyed the Land to the Crown, and afterwards the Daughter of the Husband reversed the Out-lawry; now the Wife of *M.* the person Out-lawed, sued to have Dower within the 5. years after the Out-lawry reversed, but long time after the Fine levied. In this Case it was Resolved, that she was not barred by the 5. years after the Fine, but she might have 5. years after the Out-lawry reversed. 2. That because no Office was found to entitle the Queen to the Land, she having it by Conveyance there, and in such Case there need no Office to find her Title of Dower.

*Derick and Kerys Case.*

832. *A.* seized of Lands in *S.* in *Com. Midd.* and of other Lands in *E.* in the County of *S.* made two several Leases for years of them, to two several persons, reserving upon each Lease 10 *l.* Rent; and after he made his Will, viz. As concerning my Lands, I give and bequeath the Rent of 10 *l.* a year in *S.* in the parish of *E.* to my Wife *M.* during her Life; and after her decease to my Father, and after his decease to my brother *G.* and if it please God they dye without Issue, Then to *F.* and *I.* my brethren. Item, I give to my Wife, my house and Tenements in *S.* The Defendant Married *M.* and after the years expired, claimed the Lands during the life of his Wife: It was conceived in this Case, that the word (Rent) was not sufficient to convey Land, by the Statute of Wills: *Quere*, for it was said, it was afterwards adjudged that it was.

*Arden and Backhouses Case.*

833. The Case was; an Action of Covenant, *B.* sold Land to the Father of *A.* and covenanted, that he was seised of the Land at the time of the sale; whereas King *Hen. 8.* was seised, and had Mortgaged the same to 19 Cottagers, with a *Proviso*, that if he and his successors within a year after should pay to them a sum certain, or to their Heirs, that the grant should be void; no place was appointed of payment; wherefore because the Mortgagees did not demand the Rent at the Exchequer, the King was seised again, upon which the Defendant demurred; It was the opinion of the Court in this Case, that no demand in this Case ought to be made by the Mortgagees, because the payment is eligible in the King at his pleasure. 1. 2. Resolved, whereas the Land lay in the County of *Oxon.* an Office found of not a demand in *Midd.* was not sufficient to revert the seisin of the Lands in the King; but the Office ought to have been in the proper County where the Land lay.

*Evans and Williams Case.*

834. The Plaintiff brought debt against *T.S.* for 30 *l.* who for no appearance was Out-lawed; the Sheriff took him upon the *Capias Illigatum*, and returned *Cepi*, and after suffered him to Escape; It was adjudged an action of Escape lay against the Sheriff by the party, and that the Jury are to give him the value of his debt and the damages.

*Web and Hargreaves Case.*

835. Debt upon Obligation; the condition was, where *W.* was Patron of a Benefice with Cure then void, if he presented the Defendant, and if the Defendant continued Incumbent for a year, and after the year, all time within three moneths after Notice and request, was ready to resigne, and did resigne the Benefice to the Ordinary to be presented thereunto again by *W.* and should not before Resign, that then, &c. the Defendant pleaded the Statute of 13 and 14 *Eliz.* that Obligation and Covenants for enjoyage of Lease were void, and pleaded that after he was Inducted he made a Lease to the Plaintiff *W.* of the benefices for 21 years, and avered the Obligation was made for the enjoying of the Land by the Lease, upon which the Plaintiff demurred: It was the opinion of the Court, that the plea was good, but that the averment was not sufficient; It was adjudged against him.

*William sand Greens Case.*

136. Debt upon a single Bill; the Defendant pleaded he delivered it to the Plaintiff as an Escrowle upon Condition, that if he delivered him a horse at such a day, it should be his deed; otherwise

not. It was the opinion of the Court that the Plea was not good, because a Deed cannot be delivered to the party himself as an Escroale.

*Hungate, Mease, and Smith's Case.*

837. Debt upon an Obligation to perform an accord of all Controversies betwixt the parties from the beginning of the World to the 30. of *August*, 4 *Eliz.* so as the Award be pronounced and delivered *utrique parti ante 24. diem Augusti.* and shewed, that he awarded that all Suits should cease, and they should be friends, and that the Defendant should pay to the Plaintiff 7 *l.* and that the Award was pronounced to the parties before 24. *Augusti*, upon *nihil debet*, all the said matter was found only that the pronouncing of the Award was to *Mease*, and not to *Smith*. It was adjudged against the Plaintiff because he ought to have pronounced the Award to each of the parties Defendants; and also it was void, it was but an Award of one part; also void that all Suits should cease, which could not be without Non-suit, Retrait, or discontinuance of the parties.

*Dogett and Vowells Case.*

838. Assumpsit: In consideration the Plaintiff had lent to the Defendant 20 *l.* the Defendant promised to lend the Plaintiff 30 *l.* *quando requisitus, &c.* It was adjudged no good consideration, because consideration of a thing past, is not sufficient to ground Assumpsit.

*Parban and Nortons Case.*

839. Replevin: The Defendant avowed for a Relief by the death of *J. S.* late Tenant; The Plaintiff said the Land descended from *J. S.* to his two Daughters, who enfeoffed the Plaintiff, and that the Lord accepted the Rent of him: Adjudged that the acceptance of the Rent from a new Tenant, was no bar of the Reliefe due by the former Tenant.

*Lord Berkley and Countess of Warwicks Case.*

840. Before the Statute of *West. 2.* Lands are given to Husband and Wife in Frankmarriage, the Remainder to the Heirs of the Husband if it be tail: *Quere*, not adjudged; *vide 25. Eliz. Webb and Potters Case.*

*Guy and Brownes Case.*

841. A Farmor of the King of a capital Messuage, made a Conduir to convey the water to his House over the Land of a Copyholder of the Mannor; afterwards the Mannor is granted to one, and the Copyhold to another. Resolved the Farmer may amend the Pipes in the Land of the Copyholder without Trespass.

*Worleys Case.*

842. *A.* lent *B.* a 100 *l.* for a year, and took an Obligation of him for 10 *l.* Interest (Interest being then 10 *l.* per cent.) payable 5 *l.* at the half year, and 5 *l.* at the end of the year. Adjudged it was not Usury within the Statute.

*Hainsworth and Prettyes Case.*

843. *A.* seized in Fee having four Sons and a Daughter, by Will devised 20 *l.* to each of his younger Sons, and his Daughter, to be paid by his eldest Son at their ages of 21 years, and if the eldest Son do not pay, he devised the Land which he had before devised to his eldest Son and his Heirs, to the younger, and the Daughter and their Heirs: It was Resolved, 1. That the eldest Son took by descent, and not by the Devise: 2. The breach of payment to one of them, should give the estate to them all, and the eldest Son should lose the Land for not payment of the Fourth, and they should have the Lands as Joynt-Tenants 3. That the entrie of one of them in the name of the rest was good, because they are Joynt-Tenants.

*More and Morecombs Case.*

844. The condition of an Obligation was, to deliver all the tackle of a ship mentioned in an Inventory under the hands of four men, or in default thereof to pay so much money to the Plaintiff, before such a Feast, as the four men shall value the tackle at; the Defendant said they did not value the tackle; Adjudged no Plea, because the Defendant had Election to do two things, and if he cannot do the one for any default of a Stranger or other, he is to do the other; and in this case he at his peril is to procure the men to value the tackle.

*Walter and Pigotts Case.*

845. Debt upon an Obligation *de Septingentis Libris*; The condition was, *Septuaginta Libris*: Adjudged he was to pay 400 *l.* not 70 *l.* and the Bond good.

*Bibell and Dringhopes Case.*

846. *A.* conveyed Lands to the use of himself in tail, with divers Remainders in tail, with a Proviso it should be lawful for him to make Leases for Life or years; afterwards he made a Lease for the Life of *D.* the Defendant: After the death of *A.* the Plaintiff in the sight of his Wife in Remainder entred: The points were, 1. If the Demise generally made unto, was Tenant in tail in Interest, and who had Authority by the Proviso to make Leases, shall be construed to be made by his Interest or his Authority without declaring his Election; the Court doubted of this point. 2. Because the Deed did comprise as well Fee simple Land and Lands in tail if it shall

caure by way of Interest for the Fee-simple Land only, and by Authority for the Land in tail. *Quare* also; But they Resolved the Proviso to make Leases was good.

847. Note. Upon the Statutes of 13 *Eliz.* Cap. 4. and 39 *Eliz.* Cap. 7. upon Sale made by the Queen upon Accomprants and Debtors Lands; That if any Officer be Tenant in tail, the Remainder over, and afterwards the Officer dieth without Issue before any Sale made by the Queen, and he in the Remainder enters, and is in by force of his Remainder, which was created before the Tenant in tail became Officer, yet that Land shall be sold by the Queen.

2. When an Officer is indebted to the King, and his Land subject to be sold by the Act 13. *Eliz.* and he to prevent the sale of the Queen, and to evade out of the Act, makes a conveyance of his Lands to his Issues or others of his Blood in consideration of natural affection, that such conveyance shall not be good, nor said to be *Bona fide* within the Proviso of the Act of 39 *Eliz.* but that the Queen may sell the Land for so much of her debt, as was due before the conveyance. 3. If the Officer or Debtor of the Queen after 39 *Eliz.* be Tenant in tail, or hath power of Revocation, there the Queen may sell the Land by the Statute of 39 *Eliz.* and if any such Officer or Debtor before 39. *Eliz.* and and after 13. *Eliz.* had made any conveyance to his Issues or Blood, without valuable consideration, especially if it be with power of Revocation, that Land may be sold by the Queen by the Statute of 39. *Eliz.*

*Adams and Lamberts Case.*

848. A man devised Lands to his Brother for Life, the Remainder for Life, the Remainder in tail, upon condition to find a Chaplain for ever to pray for Souls, and for the Souls of all Christian people, to celebrate Mass, Anniversaries and other Superstitious uses, and if they failed to perform the Uses, then he devised the Remainder for eight years to an Hospital, and because he doubted the profits of those Lands would not suffice, he devised other Lands to supply them, upon condition that if they aliened or let the Land to the prejudice of those in the Remainder, they should presently enter and to be seised to the said uses. It was resolved, 1. That the Devise of Land to find a Priest, &c. was a Superstitious use. 2. That although one of the uses was uncertain, and no certain Sum limited to it. 3. That although the Devise was for the Sustentation and Maintanance of poor men, yet the Limitation to them to pray for Souls was a Superstitious use, because they depended upon the Superstitious uses; and therefore it was Resolved in this case that all the Lands were given to the King by by the Statute of 1. *Eliz.* of Chauntries.

*Salway and Wiles Case.*

849. It was holden by the Justices, That if a man makes a Deed of Feoffment in December, and after and before Livery executed, the Feoffor sells the Land by good assurance to another, and after that the Feoffee takes Livery and Seisin of the Feoffor, it is Forgery in the Feffor and the Feoffee. So if the Feoffee causeth Livery to be endowed generally upon the Deed, without a special day of making the Livery, the Indorsement is Forgery.

*Mouse and Weavers Case.*

850. The case was *A.* after a Recovery in an Assize in the Court of the Mannor of *Ipsworth*, and before Seisin delivered by the Bayliff of the Mannor, bought the Copyhold by Surrender: It was adjudged maintenance within the Statute of 31. H. 8. But it was holden by the Justices, that if one recover Land, and be in possession by Writ of Seisin, he may sell the same although he nor his Ancestor or other by whom he claims was in possession by the space of a year next before: And in this case it was holden by the Justices that a Clerk or Attorney in one Court, cannot sollicite a Cause in another Court, although it be for the same matter which was in his own Court.

*Pollard and Moretons Case.*

851. It was Resolved in this case, that a Justice of Peace coming to remove a Force, may take *posse comitatus* with him: Resolved if one entresh into an house, where no man is in the house, with armed men, or company unusual, the same is a forceable entry.

*Whetstone and Minton's Case.*

852. *A.* a Citizen of London seised of divers Messuages in the Parish of St. Mary Sommerset in *Queen-birth London*: 26 H. 6. devised the same to his two Daughters in-tail, and for want of such Issue, to the Parson and Churchwardens of St. Michael and their Successors, they yearly holding and making an Anniversary in the Church for the Soul of him and his Wife, paying 6 s. 8 d. yearly, amongst the Chaplains and others there; and if the Parson and Churchwardens were remisse in holding Anniversary, then the Parson and Churchwardens and Successors for that time, should pay 20 s. of the Uses of those Lands *Nomine pene* to the use of the Chamber of London: The Devisor died, the Land being of the yearly value of 10 l. 3 s. 4 d. The Daughters died without Issue, the Parson and Churchwardens entered, and took the profits and held the Anniversary, and paid yearly the 6 s. 8 d. amongst the Chaplains, &c. *et non ultra*: The Statute of 1. Ed. 6. of Chaunteries was found: The sole Question in this case whether the Land or Annual Rent were given to the Crown by the Statute of 1 Ed. 6. of Chaunteries. It was Resolved by the Justices

in

in this Case that only the Annual Rent of 6 s. 4 d. was given to the Crown by the Statute, and not the Lands, for they said it had bin often adjudged, that where a Stipend was appointed to an Anniversary, *Obit*, Legacy, &c. there although the Land was given in the Premises, the Crown should have but the Stipend; and in this case the intent of the Devisor was clear that the Parson and Churchwardens should have all the profits over and above the 6 s. 4 d. yearly to their own use.

*Griſſe and Rigemayer Case.*

853. The case was; A man was in Execution for debt, and brake Prison and escaped. The Sheriff made fresh Suit, and retook him: It was adjudged in this case no escape, and it was holden that if the Prisoner who escapes be out of his sight, yet if the Sheriff or Goaler take him upon Fresh Suit *in recenti persecutiōe*, he shall be in Execution again.

854. Note, it was Resolved by the Justices, that the breaking of a Dwelling-house in the night, to the intent to rob or kill any one, is Burglarie, although that no person be in the house; and if a man have two houses of Habitation which he dwells in by turns, if a Thief in the night breakes the house in which the person is absent, it is Burglarie.

*Austin and Twynes Case.*

155. It was Resolved in this case, if two Churches, one of the value of 10 l. and the other of 8 l. be within one mile of another, the Ordinary may consolidate them; and if the Patron and King confirm it, the consolidation is good by the common Law, and by the Statute pt 37 H. 8.

856. The King made the city of Gloucester a County, with a clause of exemption from the County of Gloucester, and of the power of the Officers of the County, saving to the King and his Heirs, Liberty for their Justices of Assize, Goal-delivery, and keeping Sessions there; Resolved it was a good Saving, and that all Justices in their Sessions to be holden within the city, might hear and determine Offences committed in the County, but no offence done within the city, though in the time of the Sessions.

*Heydon, Smith, and others Case.*

857. *Audita Querela*: The case was, A. and B. seised of capite Lands, and P. seised of Socage Lands, they all three acknowledged a Statute of 8000 l. to R. A. and B. levied two several Fines of their moyeties to C. and W. to the use of themselves and their heirs, until default of payment was of certain Annuities, and then to the use of C. and W. they after default of payment sold the Lands to H. and D. H. released to D. who devised the Land in tail, and died, the

Devisee

Devisee in tail died without Issue; the Wives of the Plaintiff were Heirs to D. to whom the third part of the Capite Land descended: R. had extended the Lands upon Statute, before the default of payment of the Annuities, and before the Bargain and Sale, and although he sued the extent against A. and B. and also P. yet the Sheriff extended the Lands of A. and B. and to defeat the extent, and to have Restitution because the Land of P. was not extended, the *Audita Querela* was brought: The principal point in this case was, if the Bargainee, and those which claim under him, should have no *Audita Querela* for the extent made before his time: Another point was, if the Coheirs should have an *Audita Querela*, without the owner of the two parts, all of them being Tenants in common, and equally grieved with the extent: The case is very learnedly argued *pro & con*, but not Resolved.

*Salter and Botelers Case.*

858. A Rent was granted to A. his Executors and Assignes, for the Life of B. out of Bl. acre. A. died living a *Cesary que use*. The Executors of A. distreined for the Rent, and averred the Life of B. It was adjudged the Distress was not lawfull, because by the death of the Grantee the Rent was determined; but if the Rent had been granted to the Grantee and his Heirs, the Heir of the Grantee should have bin a special Occupant, and he might distrein for the Rent.

*Ewer and Moiles Case.*

859. In a Replevin by E. in the Kings Bench against M. M. being an Infant appeared there by Attorney; also an Impar lance was entred *Petit licentiam interloquendi usque*, and no day was named, and Judgment being there given, for these Errors the Judgment was reversed.

*Boulton and Bastards Case.*

860. A. and his Wife seised in the Right of the Husband of the Mannor of I. exchanged the same with S. and D. for the fourth part of the Mannor of S. A. died, the Wife entred into J. and evicted it for her Life. It was adjudged it was a defeating of the Exchange for ever, because the exchange was of Land in possession; and yet the Justices held that a Reversion might be exchanged for Lands in possession; and Note, It was said that unequal value or quantity in the one more then the other, should not ayoid the exchange, but otherwise it is of inequality of Estate.

*Stephens*



*Stephen and Tott Case.*

861. T. and his Wife being divorced in the Spiritual Court, *à tort & menfa*; The Father of the Wife devised a Legacy to her, for which she sued the Plaintiff his Executor in the Spiritual Court; he there pleaded the Release of the Husband, which the Spiritual Judges would not allow of: It was the opinion of the Justices in this Case, that the Release of the Husband was good notwithstanding this Divorce.

*Spawke and Sparkes Case.*

862. A man made a Lease for life, and after made a Lease for 99. years after the death of Tenant for life, if the Lessee for 99. years should so long live, and if he dyed within the Terme, the Lessor granted that the Land should Remain to his Executors and Assignes for 21. years after the death of the Survivor of both the Lessees. The Lessee for 99. years granted the Lease for 21. years rendring Rent, and dyed *Intestate*, having survived the Lessee for life; the Administrator brought Debt against the Assignee of the Terme for 21. years for the Rent; It was adjudged, that the action did not lye, because the Contingent for 21. years never vested in the Lessee for 99. years the *Intestate*, nor ever was in him to dispose or grant.

*Bridge and Atkins Case.*

863. Words, viz. *Thou art an old perjured Knave, and that it is to be proved by a stake between the ground of such and such*, adjudged that for these words the Action did not lye.

*Bothes Case.*

864. He was arraigned of Felony for a second forgery after Conviction of a former forgery in the Star Chamber, upon the Statute of 5 Eliz. of writings concerning the Lands of J. S. In this Case, Resolved that no Accessary can be in Forgery, but all one principally. 2. Resolved that for Felony the Kings Bench might commit one to the Fleet, or into any other Prison; and also that a Prisoner who is condemned to perpetual Imprisonment, was not Baileable nor Removeable.

*Shaw and Norwoods Case.*

865. A man by his Will devised 40 l. to two Infants equally; the Executrix delivered the money to one to whom the Defendant was Executor, who made a Bill testifying he had received the 40 l. to the use of the Infants; one of the Infants dyed *Intestate*; his Administrator brought Debt against the Defendant the Executor of the Baylee; It was adjudged, the Action was maintainable and the

specialty,

specialty, although it was not made to the Infants, yet it was a sufficient Testimony of the debt.

*Fort and Wards Case.*

866. A Copyholder had Common of Estovers in the Lords Woods, appurtenant to his Copyhold; and he purchased the Freehold of Inheritance in the Copyhold, and had words in his deed of purchase of all Commons appertaining to the said Messuage: Yet it was adjudged, that the Common which he had to the Copy estate was extinct; but if there had been special words in the Grant of the like Common as he had in the Copyhold before the surrender, it had been good, and as a new grant of Common.

*Morgan and Slades Case.*

867. It was Resolved by all the Justices of England, that an action upon the Case, upon *Assumpsit*, lyeth upon every contract Executory, as well as an Action of Debt.

*Seymayne and Greshams Case.*

868. G. and B. were Joynt Tenants of a house in *London*, wherein they had several goods, B. acknowledges a Statute and dyed; a Writ of Execution came to the Sheriff of *London*, who came to the house with a Jury to extend the goods of B. G. seeing them, and knowing the Cause of their coming, to the intent to frustrate the Execution, shut the Door of the house so as the Sheriff could not do Execution: For which the Plaintiff brought his Action upon the Case, and layd it to be to his damage of 2000 *l*. It was adjudged against the Plaintiff, that the Action did not lye. *Vide* this Case more at large in *Cook* 3. part of his Reports.

*Cornwalls Case.*

869. *Quo Warranto*; for claiming goods of *Felonum de se*: The Defendant said, that the Mannors of S. and L. in the County of *Gloucester*, were within the Principality of *Wales* before the Statute of 27 H. 8. and the Kings Writ did not run there, and that his Grandfather seised of those Mannors as Lord Marcher used amongst others to have that Liberty of goods of *Felons de se*: and that the Statute of 27 H. 8. which united *Wales* to *England* had a *Proviso*, that the Lord Marchers should retain their Franchises, to hold Courts, to have Waifes and Estrays, infangtheef, outfangtheef, and Felons goods; and deduced the Mannors to himself, and *eo Warranto* he claimed to have the good of *Felons de se* within his Mannors: upon which it was demurred: the Case is only argued, but not Resolved. *Ido Quer.*

*Darcy and Allens Case.*

870. The Queen by her Letters Patents, granted to *Darcy* the Importation and sole making of playing Cards within the Realm of *England*, for a certain Terme of years: A Citizen and Freeman of the Company of Haberdashers in *London*, Cards beings Merchable Commodities, brought Cards into *England* and sold them, for which *Darcy* brought his Action of the Case, and deccleared it was to his damage of 2000*l.* upon which there was a demur in Law. It was in this Case, after long and Learned Arguments, at length Resolved, That the Letters Patents for the sole making of playing Cards within the Realm was void; because it being a Mechanical Trade, it was contrary to the Liberty, and to the prejudice of the Subject. 2. That the dispensation or sole License to have the Importation of Cards was a Monopoly, and so void by the Law. See *Cov.* 1*r.* pt. the Case of Monopolies.

*Garrard and the Dean and Chapter of Rochesters Case.*

871. The Dean and Chapter by deed under their Common Seal, granted to the King the Mannor of *S.* in exchange for other Lands; the deed was made without a Letter of Attorney, but they acknowledged it to be their deed in their Chapter house before *J.S.* Attorney of the Court of Augmentations, who brought it into Court and it was there enrolled; with a *Memorandum* that the enrolment was such a day, which was a moneth before the date of the deed; In this Case it was Resolved, 1. That the acknowledgment of the deed in the Chapter house was sufficient, without doing it by Attorney. 2. That the Attorney of the Augmentation might take the acknowledgment of a Deed out of Court, he being a Judge of the Court. 3. That the enrolment of the deed before the date of it was not void, as to make the deed void; because it was only the Misprision of the Clark, which shall not make the deed void.

*Prine and Allingtons Case.*

872. A *Capias ad satisfaciend'* was 2. *July* delivered in *Holborne* to the Sheriff of *C.* he the same day made his Warrant to his Bailiffs, but afterwards the same day there came a *Superfideas* to the Sheriff; the Bailiffs not having notice of it, took the party in Execution, who escaped and they retook him: upon which false Imprisonment was brought. It was adjudged, the Action did lye, for the retaking of him was not Lawfull, because the Authority of the Sheriff was determined by the *Superfideas*; Yet the Court held the Bailiffs were excused in this Case, and no action of Debt upon the escape did lye, because they had no notice of the *Superfideas*.

*Webster and Allens Case.*

873. A Copyholder, where the custome was to demise for three Lives, demised to one for life, the Remainder to such a one as he should marry, and the first Son of his body. Resolved, that both the Remainders were void, but the estate for his own life good.

*Penny and Cores Case.*

874. Debt upon Obligation for payment of 8 l. the Defendant pleaded payment of 5 l. before the day, and acceptance of it in satisfaction of the 8 l. It was adjudged a good plea.

*The Queen and Bishop of Peterborough Case.*

875. A Baronesse which was a Widdow retained two Chaplains, they purchased Dispensation, the Baronesse was married before they accepted double Benefices; It was adjudged, they might after take two Benefices, because the marriage was no discharge of their Service, but if the Baronesse dye, before they accept the Benefices, they cannot afterwards take two Benefices within the Statute of 21 H. 8.

*Ward and Lakin Case.*

876. In a Replevin; the Plaintiff declared of the taking of two Heifers *quod W. tali die*, and did not say *in quadam loco vocato*, &c. and for that cause the Declaration was held to be insufficient.

*Scarles Case.*

177. Debt against an Executor by Original, he pleaded a Recovery in the Court of L. and that *ultra* he had no goods, the Recovery was after the *Teste* of the Original; but the Defendant averred that he had not notice of the Original; It was holden by the Court a good plea; but if a man be sued upon an Obligation, and he will pay another debt after without suit, if he have notice of the first suit, *Devastavit* in an Executor.

*Gregory and Harrison Case.*

878. Resolved, *Ejectione firme* doth not lye of a Copyhold; if the Plaintiff doth not declare, the Custome, Lease and Ejectment,

879. A Woman recovered Dower in the Common pleas, and had a Writ to the Sheriff, to put her in possession of the same: The Sheriff returned the Writ, that he delivered her 24 Acres; and that she had entered into 24 Acres parcel thereof, and accepted of the same. Resolved it was a good bar to her, although it was a lesse quantity then the 3. part of the Land mentioned in the Record.

*Adiffe*

*Aoliffe and Atshdales Case.*

780. Resolved in this Case; If a man be bounden to pay money for the Meate, Drink and Apparel of an Infant, and pay it; and take a Bond of the Infant to repay the money; such a Bond is void, and the Infant shall avoid it; for Nonage.

*Broke and Smiths Case.*

881. It was adjudged in this Case; that where a man by a Deed was to discharge Lands from all Incumbrances, and before the sealing and delivery of the Deed there is *Memorandum* endorsed, that it should not extend to such an Incumbrance: It was Resolved, the Endorsement is an explanation of the Deed, and made partell of it; and a suit upon an Obligation to discharge Incumbrances; shall not extend to the Incumbrances mentioned upon the endorsement of the Deed.

*Tate and Goths Case.*

882. A. was indebted to B. who dyed *Intestate*, his Wife took Letters of Administration, and brought debt, and had Judgment; and after dyed *Intestate*: It was adjudged, that an Administrator *de bonis*, none of the first *Intestate*, could not sue forth Execution upon the Judgment, but is put to a new action of debt.

*Swelman and Cuts Case.*

883. A Lease was made for years, upon condition, that if there should be default made of Reparations upon Warning given within 6 Months, the Lessor to reenter. Resolved, the warning in this Case must be given to the person and not at the place; and both to the person of the Lessee, as the person of his Assignee.

*Wilmot and Knowles Case.*

884. A. and his Wife seized of Land to them, and the Heirs of the Husband, bargained and sold them to J. S. upon Condition if they, or any of them, or the Heirs, or Assignes of the Husband pay 500 l. at such a day to J. S. it shall be Lawfull for the Husband and Wife, and the Heirs of the Husband to enter, and to hold in their former estate; and that after the payment, all Fines and Assurances should be to the use of the Husband and his Heirs; and to no other use: A Fine was Levied before the enrollment of the Deed; the Husband dyed having a daughter married to J. D. who in the right of his Wife payed the money and entered. The Defendant in the Right of the Wife of A. entered; It was adjudged his entry was Lawfull, because upon the point the use was reserved in the Wife, as it was before the Fine; and the last part of the

the Fine declaring the use to the Husband and his Heirs, was void.

*Atkins and Longvilles Case.*

885. King H. 8. Anno. 33. of his Reign, bargained and sold Land to the Ancestor of the Defendant without any words of grant; It was adjudged, it was good enough by the Expresse words within the Statute of 31 H. 8. of Monasteries, which makes all Parents, Indentures and writings made by the King after 4. Feb. Anno 27. of Monastery Land to be made within 3. years after the Act to be good.

886. In Trespas; the Record of *Nisi Prius* was of a Trespas 12 Jan. 25 Eliz. whereas the Declaration was of a Trespas 12 Jan. 49 Eliz. found for the Plaintiff; I was adjudged, the Plaintiff could not have Judgment, nor the Record of *Nisi Prius* amendable by reason of this variance.

*Fitzwilliams Case.*

887. A. suffered a Recovery to the use of himself and his Wife, with a Remainder to their Son: Provided, it shall be Lawfull for him and his Wife by their joynt Deed sealed and delivered before three Credible Witnesses, to alter, change, revoke, determine and make void any use, estate or estates limited in the said Deed, and to limit new uses, and from thence forth the Recovery shall be to the new uses. A. and his Wife made a Deed, and by the same declare, That it was their intent to alter, change and determine, revoke and avoid all the former uses to their Son, and thereupon without more words they limited new uses: It was adjudged, it was a good revocation of the old uses, and a good limitation of the new uses. *Vide Cook 6. part 33.*

*Brown and Nichols Case.*

188. It was Resolved in this Case, that a Conduit to carry Water to an house, shall passe with the house, by the word Appurtenant; and the owner may come upon the Land of another to mend it, so it be done at a convenient time, and that without either Prescription or Grant.

*Pudsey and Neufons Case.*

889. The Condition of an Obligation was, that if the Obligor make all reasonable acts, &c. which shall be for assurance, &c. to be required by the Obligee before such a day, &c. Adjudged a general request is sufficient, and the Obligor at his perill is to make it, otherwise if it had been to be devised by the Obligee or his Councell, there he must shew, that he had required such a particular Assurance, viz. a Fine or a Feoffment, &c.

*Milliner and Robinsons Case.*

890. *Ejectione firme* : A Lease was made by two Coparteners ; the Declaration was *Quod demiserunt* : ruled not good, because it is a several Lease of each of them or his part : The Case further was, *A.* devised his Land to his brother *I.* and if he dyed having no Son, that the Land should Remain to *W.* for life, and if he dyed having no Son, to Remain to the right Heirs of the Devisor. Resolved, *I.* had an estate Tail, but *W.* had it but for life, or at least to his Heirs Females; for having no Son, is meer Contingent.

*Fremwater and Rois Case.*

891. Tenant in Tail, the Remainder in Tail, Remainder to the right Heirs of Tenant in Tail : Tenant in Tail Covenanted to stand seised to the use of himself and his Heirs untill marriage, and after to the use of himself for life, the Remainder to his Wife for life, with divers Remainders over in Tail, and after he suffered a Recovery and dyed : It was adjudged, it was a bar of the Ancient Tail, because by the Covenant to stand seised, there was not any alteration of the estate of the Tenant in Tail.

892. A Parson sued for Tythes of Fodder; the Parishioners prescribed in *Non decimando*, because the Fodder was for their Cattrell which manured their Land; It was holden no good Prescription, but it was agreed Tythes should not be paid for Agistments, nor for Wood, for hedgwood to enclose the Corne, nor for Fewell.

*Rye and Fulisimbs Case.*

893. *A.* was divorced from his Wife for Incontinency, he after took another Wife, living the first Wife; Adjudged the second Marriage was void, because the Divorce was but a *Mensa & Thoro*, and not a *Vinculo Matrimonii*.

*Ward and Sudmans Case.*

894. The Case was : The Bishop of Exeter in Consideration of service and other Considerations, gave Lands to *T.* his Servant, and to *S.* his Kinswoman in Tail : *Quere*, if it was a Joyniture within 11 *H. 7.* because no Consideration was expressed but service; and the Consanguinity is but a Consideration implied; The Court doubted of it, The Case was not Resolved.

Errors.

Short and Hellyars.

895. Trespas: *Quare clausum fregit*, et *blada tritici, ad valent* 40 l. *messius, conculeavit & consumpsit*; *ut non herbam ad valent* centum solidi; *pedibus ambulando conculeavit & consumpsit*: found for the Plaintiff; Error assigned, 1. Because the *Venue facias* was returned upon Sunday, which was not dies *juridicus*. 2. Because he supposed the Continuance of the Trespas in *depastratione herbe*, whereas the Trespas is not supposed in the pasturing, but only in *conculatione & consumptione h. rba. pedibus ambulando*. The Court held the first was amendable by the Statute of 18 Edw. and for the second they said, it was but surplage.

Sir George Hennage and Cartis Case.

896. Trespas: for Trespas done in his Close in H. the Defendant justified and prescribed by reason there was a Common Foot way from H. thow the said Close, unto another Foot way from H. to K. in the same County. Issue was upon the Prescription, the *Venue facias* was only of H. whereas it ought to have been of H. and K. and for that cause the Judgment was reversed.

Holt and Tilcock's Case.

897. *Assumpsit* against the Defendant Administratrix of W. T. her Husband, and that W. T. by his Bill such a day, &c. promised for him and his Executor to deliver to the Plaintiff 5000. Tyles before the Feast of All-Saints, and to pay to the Plaintiff *santum quantum incrementu*, and gaires which the Defendant should receive of the said Tyles for a year, and averred the said W. T. received of the gaires 8 l. and that the Defendant in consideration the Plaintiff would suffer the Defendant to take and have the sole and only Administration of the goods of her Husband, and give her day for the payment as well of the 8 l. as of the 5000. Tyles, promised to pay the money and deliver the Tyles upon request; all which the Plaintiff did, and yet the Defendant had not performed her promise. Judgment upon *Nihil dicit* against the Defendant. Error was brought; it was adjudged, that the consideration was insufficient, because by the Law the Administration was to be counted to the Wife, and it doth not appear that the Plaintiff had any Administration committed to him, or that he exhibited any *Caveat* into the Spiritual Court to hinder the Wife of the Administration; and as to the giving day of payment; that was not good, because the Defendant was not his



debtor, nor chargeable in Law to pay him, and for these causes the Judgment was reversed.

*Hog and Blocks Case.*

898. Assumpsit: The Defendant was indebted to the Plaintiff 10 l. and in consideration the Plaintiff would not sue him for the said 10 l. he promised to deliver to the Plaintiff, 14. Quarters of Barley upon request; Issue was joyned, the Clerk of the Assizes returned the *Postea*, and therein put *John Puchering*, before a Serjeant which was omitted, which was assigned for Error, but the Court held it no Error, and the Judgment was affirmed.

*Levine, Vanvive, and Michael Vanvies Case.*

899. Debt upon Obligation to perform the award of A. and B. of, for and upon all Actions and other Demands whatsoever had, stirred, depending, having been between the parties till the date of the Obligation. The Arbitrators awarded the Defendant should deliver to the Plaintiff before the last day of June next, six *Kentish* cloaths which were bartered by J. S. for the third of the said *Levine*. Issue was upon the delivery of the cloaths, and found for the Plaintiff: Error brought and assigned, the arbitrament was of a thing out of the Submission; It was adjudged it was within the Submission, and the party was tied to the performance of it; The Judgment was affirmed.

*The Lord Mordant and Bridges Case.*

900. Action upon the case for these words, viz. *The Lord Mordant did know that Proud robbed Shotbolt, and at such time as Proud should be arraigned, therefore he willed Bridges to compound with Shotbolt for the same Robbery, and told Bridges he would see him satisfied therefor, if it cost him 100 l.* It was found for the Plaintiff, and damages 2 1000 l. and the Lord *Mordant* had Execution by elegit of the Lands of *Bridges*; *Bridges* died, the Administrator brought Error in the Exchequer Chamber; the Lord pleaded in abatement of the Writ of Error, his Execution by elegit, and so the Administrator could not have Error. Resolved the Writ of Error did lie for the Administrator, because it might be the Land might be evicted, and then the Plaintiff might resort to the Goods. 2. It was assigned for Error, that the words were not actionable in themselves, for it was said, that one may compound for a Robbery knowing of it, but not for the Felony, and the words are not to compound for the Felony. Also it was said, that it doth not appear in the Declaration, that the Lord was a Justice of Peace at the time of these words spoken to *Bridges*, although he was at the time that *Bridges* spake the words to him in the Declaration; upon the Writ of Error it doth not appear if the words were actionable or not; for it doth not appear in the Declaration

that the Judgment in B. R. which was given for the Lord was affirmed or Reversed, *ideo quare.*

*Callard and Callards Case.*

801. *Ejectione firme*, in B. R. The Case was *E. C.* seised of Lands in Fee, in consideration of Marriage of *Eustace* his Son and Heir apparent, being upon the Land spake these words to *Eustace* viz. *Stand forth Eustace, I do bestow, reserving an Estate for my own and my Wives Life, give unto thee, and to thine Heirs for ever these my Lands, and Barton of S.* And afterwards he enfeoffed *R.* his younger Son in Fee with Warranty, and died: *Eustace* entered, and demised to the Plaintiff; It was there holden that the words did amount to a Feoffment and Livery, being spoken upon the Land, and the use to be to the Feoffor and his wife for their Lives, and after to *Eustace* and his Heirs; upon that Judgment, Error was brought in the Exchequer Chamber, and there the former Judgment was reversed; for that the greater part of the Justices agreed, that it was not any Feoffment executed, because the intent was repugnant to Law to pass an Estate, *Eustace* reserving any particular estate to himself and his wife; and an use it could not be, for the purpose was not to raise an use, but by an Estate executed which took not effect, and they all agreed if it was an use, it could not rise upon natural affection without a Deed. The Judgment was reversed.

*Westby, Skinner, and Catchers Case.*

902. *A.* was in Execution severally under the Sheriffs of *Lond.* at the Suits of *B.* and *C.* the old Sheriffs delivered the body of *A.* by Indenture, in which the Execution of *B.* was only mentioned, and the other was omitted; *A.* in the time of the new Sheriffs escaped. It was adjudged in B. R. that the old Sheriffs should be charged in an Action for the Escape; They brought Error in the Exchequer Chamber, and the Judgment was affirmed, because it was not found that the new Sheriffs were Sheriffs at the time of the delivery of *A.* to them; and because they did not give notice to the new Sheriffs of all the Executions which were against *A.*

*Sackford and Phillip Case.*

903. *Assumpsit*: *A.* was indebted to the Plaintiff 460 *l.* the Defendant in consideration the Plaintiff would forbear to sue *A.* for the said Debt, promised to the Plaintiff to pay it before *Michaelmas* next: Upon *non assumpsit*, it was found for the Plaintiff: But in the *postea* the Verdict was not certified that the Plaintiff sustained damage by reason of the not performance of the promise for 460 *l.* for which the Plaintiff had judgment; That was assigned for Error, and also because the Declaration did not mention the forbearance of

Suit at the Defendants request, the Court ordered the *posse* to be amended, and affirmed the Judgment.

*Wistman and Jennings Case.*

904. The case upon the matter in Law was this: Tenant for Life, the Remainder in tail, the Remainder in Fee: Tenant for Life suffered a common Recovery, by voucher of him in the Remainder in tail, who vouched the common Vouchee, and if he in the Remainder in Fee were bound by the Recovery, because the Statute of 14. Eliz. is, That Recoveries suffered by Tenants for Life, shall be void against him in Remainder or Reversion, and the Proviso doth not extend to bind more of them in the Remainder, then those who assent of Record: It was adjudged in B. R. that the Remainder in Fee was bound as well as if the Tenant in tail had bin the first Tenant to the *Precipe*, and upon Error brought, the Judgment in the Exchequer Chamber was affirmed: But because the Defendant in the first Action had pleaded the Recovery by a Writ brought *de tenementis prædictis*, which was not the use in common Recoveries, but especial to have the Recovery of so many Messuages, so many Acres of Land, Meadow, Pasture, &c. in certain, and because it did not appear by the Record before them, that the Writ did contain any certainty of the Messuages or Acres, &c. the Judgment was reversed.

*Rotheram and Stibbings Case.*

905. Action upon the case against an Executor upon *Assumpsit* of the Testator to pay 100 l. in consideration of Marriage of his Daughter, the payment to be made when he should be required upon *non Assumpsit*: Judgment was had in B. R. for the Plaintiff: Error brought in the Exchequer Chamber, and the Judgment was reversed, because the Action did not lie against the Executor.

*Maynard and Basses Case.*

906. Trover and Conversion *de* 3000. cords of Wood; the case was, A. granted to B. so much wood in *Buxsted* Wood, as would make 4000. cords to be taken by the appointment of A. B. before any appointment assigned his Interest to M. the Plaintiff; afterwards A. granted to the Defendant as much wood in the said Wood, as should make 6000. cords, at the choice of the Defendant; then A. appointed B. a certain quantity to satisfy the first Bargain, which B. cut down, and the Defendant by colour of his Grant, took and carried away the same; whereupon the Plaintiff brought his Action, and had Judgment in B. accordingly: And Error brought and assigned, because the Declaration is not *de bonis propriis*. 2. Because he saith he was possessed *de* 3000. cords *ligni*, and the Defendant *cords prædicti ligni cepit*, without saying any particular quantity: and

and 3d. because the Declaration is *vi & armis*; but all the Exceptions were disallowed by the Court, and the Judgment was affirmed.

*Palm. r and Sherwoods Case.*

907. A Trespass for carrying away goods: The Judgment in B. R. was that the Plaintiff should recover his Damages for part, and the Defendant *capiatur*, and that the Plaintiff *sit in misericordia pro residuo transgressionis*, which is said to be Error, and that the Judgment ought to have bin, *Quarens nihil capiat per billam pro residuo transgressionis: Sed non allocatur*, but the Judgment was affirmed.

*Chamberlain and Nichols Case.*

908. In debt upon a single Bill for payment of money at a day; the Defendant pleaded payment without an acquittance: Issue upon it; Judgment for the Plaintiff in B. R. Error assigned because the Issue was joyned upon a matter not material nor pleadable, *viz.* payment without an acquittance; but because it was after Verdict, and the Error assigned in the Plea which the Defendant himself had pleaded: The Judgment was affirmed.

*Only and Font Le Roys Case.*

909. Debt being against an Executor, he pleaded there was another Executor, who administred and was alive, and concluded Judgment *si Actio*; whereas he ought to have pleaded to the abatement of the Bill: The Plaintiff replied *Billa cassari non debet*. It was objected to be Error, but holden good notwithstanding the Bar of the Defendant would have concluded the Plaintiff.

*Smithwick and Bingham's Case.*

910. Error brought upon a Judgment in B. R. in *Ejectione firme*, because the Plaintiff enticuled himself to a Term for years, by an Administration taken of the Arch-Bishop of *Canterbury*, and did not alledge that the Intestate had goods in diverse Diocesses; but the same was disallowed, because it did not appear to the Court whether he had or not; but if it had appeared to them, they conceived the Administration taken had been void, if the Intestate had not goods in divers Diocesses.

*Partridge and Twks Case.*

911. The case was, A. seised of two Messuages in the Parish of St. Brides London, demised them to the Parson and Churchwardens of St. Brides, *ad distribuend' annuatim* 5 s. of the profits to the poor of the Parish in *honorem & duplicationem omnium illorum annorum quibus Dominus noster Jesus Christus vixerat in terra*, and gave 20 s. to maintain a Priest, and dyed, and the Parson and Churchwardens were seised; and the Jury found the Act of 1 E. 6. and that the King

was seised, *ut Lex postulat*, and granted the same to J. S. in Fee, who devised it to the Plaintiff for Life, and that the Parson and Churchwardens recanted and were seised *ut Lex postulat*, and so demitted them to the Defendant. The Question was whether Partridge the Plaintiff was in by disseisin or not: It was adjudged in B. R. he was not in by disseisin: Error was brought, and it was adjudged that the gift of A. was good, and the giving of 5 s. *inter pauperes*, was no Superstitious use; and where part is given to a good use, and part to a Superstitious use, the King shall have but that Rent which is given to the Superstitious use, and the Land shall go to the Devisee.

3. It was said the entry of Partridge was no Disseisin, because no actual expulsion of the Parson and Churchwardens were found: but the Court held, that because it is found that Partridge when he made the Lease was seised *prout lex postulat*, his Seisin shall be intended lawful and not by disseisin, and it cannot be lawful because the Devise was good to the Parson and Churchwardens, and therefore it was by disseisin, and afterwards the Judgment was reversed.

*Bucknel and Hays Case.*

912. Error brought upon a Recovery in Battery in B. R. and assigned that there was no Bail there, and upon a Certiorari, the Chief Justice certified Bail, J. H. without addition, and with a Blanck for the place of his Habitation: The Judgment there was reversed, because no bail for the party who was sued, and so he was never in the custody of the Marshal, nor could be sued there.

*Tinges and Beachers Case.*

913. In Assumpsit in B. R. the Declaration was, That the Defendant was indebted to the Intestate 30 l. for the residue of 100 Quarters of Wheat, sold to him by the Intestate. The Defendant promised the Plaintiff being Administrator, to pay it when he should be required: Found for the Plaintiff there, the Judgment was reversed, because in the case Debt lay, and not Action upon the case.

*Odj and Yates Case.*

914. Note. It was holden by all the Justices, that a Writ of Error was not maintainable in the Exchequer Chamber, by the Statute of 27. Eliz. upon a Judgment in B. R. upon Rescous, because it is not within the words of the Statute, although it be a Trespass.

*Giddy and Heales Case.*

915. Action upon the case in B. R. by Heale, for these words he being a Counsellor at Law; Whereas one said to Giddy, that Heale had affirmed upon his credit that the Fee-simple of certain Lands was in the Patentees of the Queen: The said Giddy said, No friends, Heales

*Warranty we well know, a great number of his Country trusting to his Warranty have been undone. It was adjudged in B. R. for the Plaintiff, and 100 l. damages, and Error being brought in Exchequer Chamber, and assigned the Words were not actionable. The Judgment was affirmed.*

*Marroner and Cotton Case.*

916. Judgment was given against *Marroner* in the B. R. for *Cotton*, for these words spoken against *Cotton* a Justice of the Peace, viz. *He hath received money of a Thief that was apprehended and brought before him for stealing of Sheep, to let him escape and keep him from the Goal*: Error brought in Exchequer Chamber, and assigned the words were not actionable, but the Judgment in B. R. was affirmed.

*Bishop and Gins Case.*

917. Debt upon an Obligation in B. R. for performance of Covenants; one was, that he delivered a Ship in London, *usque portum de Blackney*, and no time limited for it, and the breach was assigned in it, that he did not deliver the ship such a day, and Judgment there for the Plaintiff: Error brought and assigned that the Issue was ill joyned, because he had time to deliver it during his Life; that the Court said, was but the misjoyning of the Issue, which was remedied by the Statute of Jeofails after Verdict. 2. Error, that the *Venue* was of *Blackney*, where it ought to be *de Portu Blackney*: The Court held it no Error, but good, and the Judgment was affirmed.

*Falsow: and Thornies Case.*

918. In Debt; the *Venue* upon the Roll was returnable *die Martis post 15. Trin.* and the Writ *in facta* was returned *die Jovis post 15. Trin.* that was assigned for Error, but *non allocatur*; because but misawarding of Process, which is aided by the Statute of Jeofails, and the Judgment was affirmed.

*Cundey and Edgecombs Case.*

919. In Debt, the *Venue* was filed, *Trin. 35. Eliz.* to try an Issue between *Richard Cundey de Bodrygan querent, & Peter Edgecombe de Mount Edgecomb in Com. Devon Defendant*; The Writ was direct *Vic' Cornubie, Hill. 39. Eliz.* The continuance upon the Roll was, *Juratores inter Richardum Cundey de Bodrygan in Comitatu Cornubie mercatorum querent. & Petrum Edgecombe de Mount Edgecomb in Com. Devon, in placito debiti ponitur in respectu, nisi Justitarius ad Assisas in Comitatu predict. capiendas assignat. prius venerint, &c.* upon the Margent was written *Cornubie*. It was assigned for Error that the last County is *Devon* in the Addition of the Defendant, for the habitation of the Defendant. The Justices held it no Error, because *Cornubie* was in the Margent, and where there are two Counties, before,

before, *Com. prædict.* shall extend to that which will affirm the Judgment, although the other be the Proching antecedent.

*Wilcoy and Hemsons Case.*

920. Debt upon a Bill of 30. l. The Defendant pleaded he delivered the Bill upon a Condition to the Plaintiff, that if he did procure a particular of certain Land, that it should not be his Deed; but if he did not procure the particular, it should be his Deed; The Plaintiff took Issue it was his Deed, and so found by Verdict: Error brought and assigned, that the Defendants plea was insufficient, and the Plaintiff ought to have demurred upon it, and the Issue which he took was vain and void, because the especial matter had confessed the Deed, and so the Issue is taken upon a thing confessed; the Judgment was affirmed because the Defendant cannot assign Error in his own Plea, and although the Issue be joyned upon a thing confessed, the same is but surplussage, and it was in the Election of the Court, to give Judgment either upon the Plea, or the Verdict.

*Joyner and Ognells Case.*

921. Debt upon a Bill of 100 l. by Humphrey Joyner Executor of George Skinner, against the Defendant; the Defendant pleaded *per minas*, and after Issue joyned before *Nisi prius*, he confessed the Action in Court, The confession was entred *non potest dedicere, quia ipse debuit prædict. Georgio Skinner in vita sua prædict. 100. l. modo & forma ponit*; and upon that the Judgment was *Quod prædict. Humfred Joyner recuperet versus prædict. Georgium Ognel debitum suum prædict. necnon quatuor libras pro damnis suis quæ sustinuit, tam occasione detentionis debuit prædict. quam pro missis, &c. eidem Humfredo Skinner per curiam adjudicat*; upon this Judgment, Error was brought and assigned that the confession of the Action is not according to the Declaration, for the Declaration is in the *debit* to the Testator, and Detinet of the Executor as it ought to be, but the Confession is in the *Debit* only. 2. Error, the Judgment is, *Quod Humfrey Joyner recuperet debitum, eidem Humfredo Skinner adjudicant*, whereas it ought to be, *eidem Humfredo Joyner adjudicat*. As to the first Error, the Court said, that after the Defendant hath relinquished the Bar, the Declaration remains without defence, for which cause the Court may well judge for the Plaintiff; and for the second Error, it was amended by the Court.

*Gomersall and Watsons Case.*

922. *Eliz. Watson* the Defendant brought Debt in B. R. against the Plaintiff, Executor of *William Gomersall*, and shewed that the Testator retained her in his Service 28 *Eliz.* taking 40 s. for one year for her Wages, and so from year to year, and that she had served the Testator five years, who died, her wages not paid: The Defendant, the



the Executor pleaded *Nihil debet*, which was found against him, and Judgment for the said *Eliz.* the Plaintiff: Error was brought, and assigned the Action did not lie against the Executor; It was said by the Justices it appeareth *prima facie* upon the Declaration, that the said *Eliz.* was compellable to serve by the Statute of 5 *Eliz.* and then when he voluntarily retains her in service, being compellable to serve, the Master cannot wage his Law in Debt for the wages, and therefore the Action is maintainable against his Executors.

*Stanton and Sulard's Case.*

923. Note. It was Resolved in this Case: Whereas the Sheriff brought an Action upon the case against the Defendant in the Kings Bench upon *Assumpsit* to pay the Sheriffs Fee upon arresting the party in Execution, which was 12 d. for every pound, where the Execution did exceed a 100 l. and there Judgment was given for the Plaintiff; that upon Error thereupon brought in the Exchequer, the Judgment was reversed, because an Action upon the case did not lie in such Case.

*Bowes and Powletts Case.*

924. In the Kings Bench the case was, A. and B. were Indebted to the Queen by Recognizance 500 l. C. and D. were indebted in 200 l. to F. by Obligation; F. was indebted to A. 200 l. F. at the request of A. assigned the Debt of 200 l. due from C. and D. to the Queen by Deed enrolled in part of satisfaction of the 500 l. due to the Queen by A. B. A. afterwards for his discharge of the 200 l. against the Queen, prosecuted Suit in the Exchequer against C. for the levying of the 200 l. of the goods and Chattels of C. C. in consideration that A. would forbear to prosecute any Process against the said C. till Hill. Term following, promised to pay A. 200 l. and 20 l. to buy him a Gelding; and in an Action upon the case brought for it in B. R. upon *non Assumpsit*. It was found for the Plaintiff there, and Damages and Judgment: Error was brought in the Exchequer, and the Judgment upon the body of the Declaration was reversed, because the consideration was not lawfull nor sufficient, for the surceasing of a Suit was no discharge of the Debt, nor was it lawfull to have recompence for the forbearing or surceasing of a Debt which was due to the Queen.

*Hinson and Burridges Case*

925. Action upon *Assumpsit* in B. R. In consideration the Plaintiff would sell and deliver to J. S. the Defendants Factor, at the request of the Defendant, 200 Hog-labms, to the use of the Defendant, he promised he would pay so much money to the Plaintiff, as should be agreed betwixt the Plaintiff and J. S. and alledged he delivered them to J. S. and J. S. and the Plaintiff agreed for 40 l. price,



price, to be paid at certain dayes since past, and the Defendant had not paid the mony; It was found for the Plaintiff, and Judgment, Error brought and assigned. 1. That the Contract was the Contract of the Defendant himself, and Debt did lye, not *Assumpsit*: Resolved the sale was to *I. S.* and the use is but a Confidence which gave not property to the Defendant, so that Debt did not lye against him, but *Assumpsit*. 2. Error, no place is alledged where the Plaintiff and *I. S.* agreed of the price and day of payment, which is traversable: The Court held it good enough, because the Defendant pleaded *Non Assumpsit* and a verdict was given; But the Court said, it had been a good cause of Demurrer.

*Palmer and Humphreys Case.*

926. *Ejectione firme de una pecia terra vocat. M. furlong, una pecia terra vocat. Asbrooke, uno Gardino vocat. Minching-Garden, que omnes & singule parcella terra jacent in W.* It was assigned for Error, that *pecia terra* is uncertain, and so the Declaration not good. And 2. Because no place certain is alledged in which the Garden is; and for these Causes the Judgment was reversed.

*Matthew and Matthews Case.*

927. *Assumpsit* in B. R. whereas the Testator was endebred to the Plaintiff 35 *l.* The Defendant being his Executor, in consideration the Plaintiff would give him day, promised to pay the money: Found there for the Plaintiff, and Judgment upon Error brought, the Judgment Reversed: Because the consideration was not sufficient, because the Defendant was not by Law bound to pay the money after the death of the Testator, and giving day to pay that which he was not bound to pay, was no sufficient Consideration.

*Edmunds and Bushins Case.*

628. Debt in B. R. and declared, the Dean and Chapter of *W.* demised the Rectory to *A.* for 60. years, which by mean Conveyance came to *F.* who demised it to *C.* for 20. years rendring Rent, *C.* demised it by his will to *D.* 10. of the last years, and afterwards dyed possessed: *D.* entred and granted his Interest to *Edmunds*. *F.* demised the residue of the Terme to *S.* his Wife and Executrix: *S.* married *Bushin*, they brought Debt and had Judgment; Error was brought and assigned, that *C.* the first Lessee of *F.* demised 10. of the last years to *D.* and it was alledged, that the demisor made not any Executor, or that the devisee did enter by the assent of the Executor, nor that he was possessed by virtue of the demise, but general

will that he entered after the death of the devise, and for these Causes the Judgment was reversed.

*Paranour and Pains Case.*

929. Action upon the Case in B. R. and declared, in Consideration the Plaintiff had sold to the Defendant 14. Cows for 34 l. and 4. Oxen for 16 l. the Defendant promised to pay *cum requisitis esset*; Found for the Plaintiff, the Judgment was reversed, because the Consideration was not sufficient; but Debt lay upon the Contract, and not Assumpsit.

*Plaine and Bagshawes Case.*

930. Debt in B. R. against B. Executor of I. S. and demanded 47 l. 8 s. 8 d. *monetae Flandriae attingens* to 40 l. 12 s. 6 d. English money: The Defendant pleaded fully Administred, the Jury found Assets and Judgment there that *recuperet debitum suum pradiet & damna sua pradiet*; Error brought and assigned, for that the Jurours did not inquire of the value of Flanders money; and for that cause the Judgment was reversed; for although the Plaintiff did affirme the Flanders money did attain to 40 l. 12 s. 6: yet it is no Warrant to the Court to adjudge it so, unless found by the Jury.

*Stafford and Powlers Case.*

931. Error was brought of a Judgment in an action upon the Case in B. R. for words; the words were *viz. One W. Web being arrested as accessory for stealing his own goods, Mr. Stafford knowing thereof discharged the said Web by an agreement of 3 l. to which Mr. Stafford was party, whereof 30 s. was to be paid to Mr. Stafford, and was paid to his man by his appointment*: Error brought, It was said the words were not actionable; but the Justices held them actionable, and the Judgment was affirmed.

*Burdos and Perry and his Wives Case.*

932. Debt in B. R. upon an Obligation made by the Wife *dum sola fuit*, the Defendant pleaded *Non est factum*; found for the Plaintiff: The Judgment was, that the Husband be in *misericordia*, and the Wife *Capiatur*; And it Reversed because it ought be *Capiatur* against both.

*Pemaddock and Erringtons Case.*

933. Assault and Battery in B. R. against two Defendants, and declared of Assault, Battery & *tantas minas de vita sua imposuer*, *quod non audebat ire circa negotia*. They pleaded *De son Assault demesne*; It was assigned for Error, that the Assault of one cannot be the Assault of the other, and they ought to have pleaded several pleas; the Court held it no Error, for that the Assault might be joyned; 2. Error, because nothing is said to the *Minas*, yet the Judgment

Judgment was affirmed, because (*Minas*) is but to enforce the damages and not the substance of the Declaration.

*Wilcocks and Greenes Case.*

934. Debt against Executors upon Obligation of 160 l. they pleaded a Recovery by a stranger of 200 l. upon another Obligation, and averred it was a just and true Debt, *ultra* which they had not in their hands; the Plaintiff said the Recovery was by Covin; It was adjudged in B. R. for the Plaintiff; Error brought, and the Judgment reversed, for it could not be by Covin; if it was a just Debt, and the Replication should have been *absque hoc*, it was a just and true Debt.

*Morser and Rosser Case.*

935. *Assumpsit*: In consideration the Plaintiff would surcease his Suit which he had in Chancery against the Defendant, the Defendant promised to save him harmless from all actions which should be brought against him for or Concerning a Lease which the Defendant had assigned to him; and alledged, he surceased his Suit; and that a Stranger had brought an action against him in B. R. by reason of the said Lease, and the Defendant did not save him harmless: Judgment being for the Plaintiff in B. R. It was reversed, because he did not shew the certainty of the Action brought against him, nor that it was for any matter in *esse* at the time of the promise.

*Wood and Buckleys Case.*

936. Action upon the Case; whereas *Wood* exhibited his Bill against *Buckley* in Star Chamber, containing he had nusselled Pirates, Murderers and other Malefactors, he being a Justice of Peace and Vice-Admiral. *Wood* afterwards in another place having speech with divers concerning as well of the ill carriage of the said *Buckley*, as of the matter in his Bill against *Buckley* in the Star Chamber said I will Justify every matter therein to be true; The Defendant Justified the speaking of the words, being examined upon the truth of his Bill before I. S. and I. D. by Command of the Councell, and traversed that he spake them at any other place or time, upon demur, being adjudged for the Plaintiff: upon Error brought the Judgment was reversed, because no action lying for the exhibiting of the Bill, no action lay for saying the words of his Bill were true.

*Sir Henry Berkley and Earle of Pembrookes Case.*

937. Action upon the Case by the Earl of Pembroke against Sir *Henry Berkley*; and shewed, he was seised of the Mannor of S. to which the Office of the Keeper of the Forrest of F. did appertain in

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Foe, and to have *omnia bona* forfeited within the Forrest, & *fugam facere bis per annum*, & *quicquid de huiusmodi fugatione*, *accidere possit*, and to have Hony, Wax, *mortuum boscum*, &c. appertaining to his Office, and the Defendant disturbed him to exercise the said Office: The Defendant pleaded a Deed in Tail, in Bar made by the Plaintiff; In the Deed there was a *Proviso*, viz. *Provided alwayes, and the said Sir Henry Berkeley, doth Covenant for him and the Heirs males of his body, to and with the said Earl and his Heirs, to preserve the game as far as commonly hath been used, and that he nor his Heirs males shall cut or sell any woods there, except for browse and necessary reparations*: and the Plaintiff said, the Defendant had cut down four Oakes, and converted them to his own use, and avetred they were not for browse nor reparations, and that he entred for the forfeiture: It was adjudged upon a demur in B. R. for the Plaintiff. Error was brought upon the Exchequer Chamber, upon the matter in Law: that the *Proviso* was not a Condition, but a Covenant; but as to that point, it was Resolved by all the Justices, that the *Proviso* was a Condition.

2. Error was that the damages were assessed entirely for divers things, some of them being uncertainly and insufficiently alledged; for he prescribed to have *omnia bona satisfacta*, which could not be without Charter, also to have *de fugatione quicquid acciderit*, which was also uncertain; and also the damages for them ought to have been severally assessed and not entirely; The Court held, that for that Cause the Judgment was erroneous, and for that Cause only the Judgment was reversed.

Reymer and Grimstones Case.

938. *Assumpsit*: In Consideration, he at the Defendants request had promised to wash the Defendants linnen, and the linnen of his Servants, and to provide meat and drink for the Defendant and his Servants, the Defendant promised to pay so much money to the Plaintiff when he should require it, so as it should not exceed the proportion used in *O.* for the like time: and further declared, that in Consideration the Defendant upon account between them made, was in arrearage to the Plaintiff 18 *l.* the Defendant promised to pay him the said 18 *l.* and the Plaintiff shewed for how long time he had washed the Cloathes, &c. and that he required 8 *l.* which did not exceed the proportion in *O.* upon *Non Assumpsit*, found for the Plaintiff; and damages severally assessed, for the Costs entirely: Error was thereupon brought, it was the opinion, that the first *Assumpsit* was good, and the second void; and the Judgment given for the damages and Costs upon the first *Assumpsit* was good, and the Judgment for them affirmed, but for the damages assessed upon

upon the second *Assumpsit*, and for the damages *de incrementis* entirely give for both, the Judgment was reversed.

*Goodall and Wyatts Case.*

939. In *Ejectione firmæ*; The Case was, *A.* made a Feoffment of Lands to *B.* in Fee upon Condition, if *A.* paid within a year after the death of the Feoffee, to his Heirs, Executors or Administrators 100 *l.* that the Feoffment should be void; *B.* made a Feoffment over to *C.* and dyed; and afterwards within the year, it was agreed betwixt *A.* and the Administrator of the Feoffee, that the said *A.* should pay to the Administrator the 100 *l.* and that the Administrator should repay back all to *A.* the Feoffee; but only 32 *l.* which was done accordingly; and then *A.* entred into the Lands, pretending the Condition was performed, it was adjudged in *B. R.* that his entry was not Lawfull, and that this fraudulent and Covinous payment was no performance of the Condition, and upon a Writ of Error brought in the Exchequer Chamber, all the Justices agreed; that the Judgment given in *B. R.* should be affirmed.

*Vitsey and Fermours Case.*

940. The King granted *Manerium de H. in Parochia de R. & omnia, terras, decimas & hereditamenta sua in R. & A.* in the tenure of *J. S. nec non omnia alia, terras, tenementa & hereditamenta in R. prædict.* It was adjudged in *B. R.* that the Tythes in *H.* which was a Town within the Parish of *R.* did passe; But upon Error brought the Judgment was reversed; because *R. prædict.* shall be intended *R.* the Town, and not *R.* the Parish.

*Adams and Dixons Case.*

941. *Assumpsit*; the Plaintiff was Bail for *I. S.* in *B. R.* the Defendant in Consideration that he should pay him the Condemnation, promised to deliver to him the Bond made for the principal Debt, and a letter of Attorney to sue the principal in his name: It was adjudged for the Plaintiff in *B. R.* and upon Error brought, the Judgment was reversed, because it was an insufficient Consideration.

*Dickenson and Sheres Case.*

942. Upon the awarding of the *Venue facias* upon the Roll, the day of the return of it was omitted; this being assigned after verdict for Error; was holden by the Court not to be Error.

943. Note, it was Resolved by the Justices, that an action lyeth for the Rector of a Parsonage against the Parishoners, for not setting forth of their Tythes, although the Statute of *Edward 6.* doth not appoint who shall have the action.

*English and Bowers Case.*

944. Covenant upon an Indenture of demyse of the Rectory of S. in the County of O. The Indenture was made at London, and the *Venire* Issued to the Sheriff of O. It was assigned to be Error, but the Court held it good, because it shall be of the County where the Land lyeth.

*Hiley and Rigs Case.*

945. A Bill was exhibited in the name of Rigs per Johannem Keeling *attornat suum*, and the Warrant of Attorney was *posuit* *licet* *con* *Gulielmum Keeling*; the same was assigned for Error, but the Justices caused it to be amended, and affirmed the Judgment.

*Maylard and Kellers Case.*

946. *Assumpsit*; In Consideration the Plaintiff would sell and deliver to the Defendant *pannos laneos pro funeribus* of a Clerk, he promised to pay him for them *cum inde requisitus esset*, and alledged he sold and delivered divers Cloths to him, viz. 31. yards of black Cloth for 19 l. and reciev'd divers other particulars amounting to 160 l. upon *Non Assumpsit* found for the Plaintiff. Error brought in Exchequer Chamber, and the Judgment was reversed, because Deds properly lay, and not *Assumpsit*.

*Walley and Mosleys Case.*

947. Action of Assault and Battery in B. R. upon a demur the Plaintiff had Judgment to recover; It was a Warded upon the Roll à *Fieri fac.* to enquire of damages returnable *die Martis post tres Trinitatis*: and the Writ was *in facto* returned *die Mercurii post tres Trinitatis*, which was the very date of the return upon the Roll, and the Plaintiff had damages and Costs 40 l. Error was brought and assigned, whereas by the Record of the Continuance the Plaintiff appeared by J. P. his Attorney, that before that time he was dead: The Court held that to be no Error, because the Record is to be credited before the allegation of the party. 2. Because there was variance between the Roll and the Writ, the Court held that was amendable. 3. That the Writ is executed the same day of the Return, that was holden to be no Error, and so it was said it was adjudged *Mich. 37. and 38. Eliz. in Gaven and Ludlows Case.*

## In the Court of Wards.

The Queen and *Sauvages* Case.

948. *A.* seised of Lands holden in Capity by Knight service, by License 27 H. 8. conveyed the same to his Son and Heir apparent, and *F.* and their Heirs, in consideration of Marriage betwix them; who intermarried, and 2 E. 6. by Fine regranted the Land to the Father, who rendred it to the Son and his Wife, and to the Heirs of their two bodies begotten; the Father dyed, the Son having Issue three Daughters dyed, 5 Mar the eldest Daughter had Issue *Fran. Moore*, and dyed 25 Eliz. *F.* took second Husband *W. Savage*, and they 28 Eliz. Leased the Rectory of *K.* to *I. S.* for 60 years, and after granted the Reversion of the Rectory, and Leased the Mannor to *A. Savage* for the life of *F.* Afterwards a Common Recovery was had, in which *S.* and his Wife were vouched; The Queen prayed to have the Wardship of *Fran. Moore*, and to have the primer seisin and profits of the Land after the death of the Wife: *W. Savage* averred the Recovery was to the use of himself, pretending thereby, that the Issues in Tail of the Son of *Agnes* and *F.* were barred; In this Case, it was Resolved for the Queen for one moyety, and that the first Feoffment by *A.* to his Son, *F.* before Marriage was not within the Statute of 11 H. 7. but when they Reconveyed back the Land, that was a Conveyance of each of them their parts, and then the render of the whole to them in special Tail, as to the moyety of the Son; the gift of the Father to the Son, and his Wife within the Statute of 11 H. 7. but as to the gift of the Wife by the Fine was not within the Statute; but the Recovery as that should bind the Issue.

*Fishers* Case.

949. It was found by Office, that *A.* seised in Fee of divers parcels of Lands holden by Knight service in Capite, 21. Eliz. by License conveyed them to *I. S.* and *E.* his Wife, Daughter of the said *A.* and that afterwards by Indenture he Covenanted for Fatherly love and affection, that after the sealing of the said Indenture, he would stand seised of the premises to the use of the said *I. S.* and *E.* his Wife in Tail, Remainder in Fee to a stranger. It was not found when the said Indenture was sealed and delivered, nor that *I. S.* and *E.* his Wife were seised in Tail; nor was it found in the Office *Sic inde Scitimus* did Covenant: Notwithstanding these Exceptions

ceptions, it was Resolved that the Office was sufficient, wherefore a Travers was to the Office.

*Gervoyes Case.*

950. *A.* seised of the Mannor of *N.* in the County of *W.* and of Lands called *F.* in the County of *S.* in Consideration of Marriage, and for a Jointure for his Wife Covenants, that he and his Heirs shall stand seised of the Mannors Lands, &c. to the use of himself and his Wife for their lives, after their deceases, to the use of the Heirs of the body of *A.* The Lands in *F.* are recovered by verdict from *A.* only during the Coverture between them, *A.* dyeth, his Heir within age: It was Resolved in this Case, that the Wife should have recompence for the Lands which were Enrolled during the Coverture, although she accepted of the Residue of her Joynture after the death of her Husband.

*Forsters Case.*

951. The Husband seised of Land in the Right of his Wife, which was holden in Knight service, the Heir being in Wards, committed wast in the Lands: Resolved the Husband should be charged to the value of the Lands, and lose the possession of the Lands, so long as his Wife should live.

*Georges and Stanfields Case.*

652. Lands by Act of Parliament were assigned to the Countess of Bindon during her life, the Reversion to her Daughter, who was in Ward to the Queen; the Viscountesse took Husband, and she and her Husband committed wast in the Land; For the punishing of which a Bill was exhibited in the Court of Wards: Resolved, that the Court of Wards could not adjudge treble damages for the wast in this Case, and therefore the Case was dismissed to Law.

*Bridges Case.*

953. *A.* bargained and sold Lands to *B.* and *C.* by Deed enrolled, they suffered a Recovery to the use of *A.* and his Wife, (who was the Daughter of *B.*) for her Joynture, the Remainder over in Tail to their Issues, *A.* dyed, his Heirs within age: Resolved in this Case, it was an Assurance by *A.* himself for the advancement of his Wife and her Issues, within the Statute of 34 H. 8. and the Heir of *A.* should be in Ward for the third part of the Land.

*The Earl of Bedfords Case.*

954. The Case was this; Francis Earl of Bedford made a Feoffment in Fee of the Mannor of *D.* to the L. St. John and others, to the use of himself for 40. years, and after to the use of John his second Son, and the Heirs males of his body, and for want of such Issue



to the use of the right Heirs of the Feoffor. Afterward *Edward Lord Russell* Heir apparent of the Earl, dyed without Issue male of his body, having Issue *Eliz.* and *Anne* Daughters. Afterward *Francis* by Indenture between him and *I. S.* and others for the advancement of the Heirs males of the body of the said Earl, and the establishing of his Mannors in his blood; Covenanted to stand seised of the said Mannor, to the use of himself for life, and after his decease to the use of *Francis Lord Russell* his youngest Son, and the Heirs males of his body, with divers Remainders over. Afterwards *Francis Lord Russell* dyed, having Issue *Edward Lord Russell*, and after dyed, and if the Daughters of the said *John Lord Russell*, or the Earl of *Bedford* should have the Mannor of *D.* was the Question in the Court of Wards: It was Resolved, the Daughters should not have the said Mannor, but the Earl, because there was no right Heir to take as purchasor, when the estate Tail was determined by the death of *John Lord Russell* without Issue male; for the Remainder to the right Heirs cannot be preserved by the mean estate for years; for it ought to be a Freehold at least which ought to preserve such a Remainder, till there be one to take it by the name of a purchasor as right Heir.

*Andrews and Sheffields Case.*

955. *A.* hath Issue three Sons *B. C.* and *D.* and seised of Lands in *P.* by Will devise them in this manner, viz, *I will that all my Lands in P. shall Remain after the death of my Wife, to C. my Son and his Heirs, and if it fortune that D. liveth untill the said Lands come to C. then I will that C. pay to D. 10 l. every year as long as D. liveth: A. dyeth, C. cometh to the Lands and payeth the Rent, hath Issue and dieth. It was Resolved, that in this Case the devise did enate as a Rent-seck for the life of *D.* and the Lands in the hands of the Heir or Assignes of *C.* should be chargeable with the same.*

*Wrotlesleys Case.*

956. *A.* seised in Fee of the Mannors of *N.* and *W.* of the Mannor of *D.* in Tail; Covenanted to stand seised to the use of himself and his Wife and to his own right Heirs. Afterward he dyed seised of these Mannors, and also sole seised of other Lands in Fee: The Mannor of *D.* was holden in Capite; It was found, that *A.* dyed, his Heirs within age; the body and Lands of the Mannor of *D.* was committed to *I. S.* and *I. D.* the committee ousted the Wife of *D.* It was Resolved, that the Wife of *A.* should have recompence to the value of the said Mannor of *D.* out of the other Lands of the Heir of which his Ancestors dyed seised.

*Boydell and Wallballs Case.*

957. The Case was, *A.* seised of Land in Fee : an Indenture was made purporting a Feoffment to *B.* and *C.* with Warranty ; There was another Indenture bearing date the same day with the first, between the Feoffees and the Feoffor, whereby the Feoffor reciting the former Feoffment to them granted, that immediately after the said Feoffees and their Heirs and Assignes have taken and received the profits of the Lands, during the Terme of 100. years ; then it should be Lawfull for *A.* his Heirs and Assignes to recenter, and have the said Lands in their first right and Title : It was Resolved by the Justices in this Case, that the Intent upon the Livery was, that the Feoffor should have the Lands after the 100. years quire possession of the Feoffees, and that the use did immediately arise to the Heirs of the Feoffor, as soon as the Lands had been enjoyed for 100. years, and that by the Statute of 27 H. 8. the Heir of the Feoffor might enter.

*The Earl of Rutlands Case.*

958. *Ed.* Earl of *R.* seised in Fee of and in the Reversion or Remainder of the Mannor of *E.* expectant upon the death of *B.* Countesse of *B.* who held the same for life : for the augmentation of the Joynture of *J.* his Wife, Covenanted 21 Eliz. with *J. S.* and *J. D.* before the last day of *Trinity* Term next following, by Fine or other assurance to assure the Reversion or Remainder of the said Mannors to them and their Heirs ; and the parties thereof seised should stand seised of and in the Reversion and Remainder of the said Mannor, to the use of the said Earl and the said *J.* his Wife, and the Heirs of the said Earl for ever : Afterwards in the same year, by another Indenture made between the said Earl, the Lord Treasurer, and the said *J. S.* and others of the other part, for the advancement of him who should succeed him in the Earldom, and the advancement of the Heirs male of *T.* late Earl of *R.* his Grandfather ; to convey the Castle and Honor of *B.* and the said Mannor of *E.* ( amongst other Lands ) to the said Lord Treasurer and others to the use of the said Earl and the Heirs males of his body ; and for want of such Issue to the Heirs males of *Tho.* his Grandfather, with divers Remainders over, and by the last Indenture further Covenanted, that if the said Earl before the Feast of our Lady next, should not sufficiently convey all the said Honors, Mannors, &c. in the last Indenture, in manner and forme as therein is mentioned ; that then he and all other persons seised, should from thenceforth stand and be seised to the uses in the last Indenture : No Fine was levied of the Mannor of *E.* before the end of *Trinity* Term, but in *Mich.* Term, a Fine was levied of the said Mannor within the

time limited in the last Indenture, and another Fine was levied of other Land, but not of the Mannor of *E.* and after the Earl died : The Quest on in this case only was, whether *J.* the wife of the said Earl might during the Life of *B.* Countess of *B.* traverse the Office found after the death of the Earl ; viz. That the Fine levied of the Mannor of *E.* was not to the uses limited in the latter Indenture ; Resolved that the Office was insufficient for the Incertainty, where it found the Earl was seised of the Reversion or the Remainder, and therefore no traverse could be to it ; but they conceived if it was a Reversion, a Traverse did presently lie ; if a Remainder, that it did not lie till after the death of the Tenant for Life, which was *B.* Countess of *B.*

*Worleys Case.*

959. *A.* seised in Fee of the Mannor of *D.* holden in capite with 500 *l.* to be sold, having a long intent to sell the same, that he might more freely dispose of his other Lands, and satisfy a just debt of 60 *l.* which he owed to *J. S.* by Deed indented and enrolled, in consideration of the said Debt, and other considerations, viz. Upon trust and confidence that he should pay to *W.* his Executors or Assigns within one year, so much money above the said 60 *l.* He bargained and sold the said Mannor of *D.* to *J. S.* and his Heirs ; *W.* within one year died, no money paid, his Heir within age. It was Resolved his Heir should not be in Ward, because neither the Land nor Surplussage of the same, ought to come to his Heir by the Trust, nor be paid to the children or wife of *W.*

*Drowes Case.*

960. *A.* seised of divers Messuages in the Parish of *S.* in London, made a Lease thereof for 31. years to *B.* and *M.* his Wife, paying yearly during the Term 60 *l.* at four Feasts, viz. The Nativity, &c. or within 28 days after each of the said Feasts ; afterwards he covenanted to stand seised to the use of himself for Life, and after to the use of his eldest Son and his Wife, and the Heirs of their two Bodies : and then for money he bargained and sold the Land by Deed enrolled to *J. S.* to hold to him and his Heirs during the Life of the Lessor. *J. S.* dyed seised of that Land, and of other Lands holden in capite, his Heir within age. It was found by Office that *A.* died after the Feast of the Nativity, and within the 28 days next following : Resolved the Rent was due to him in the Remainder, and that the Wardship of the Land being but a Freehold descendable did not belong to the Queen.

*Digbys Case.*

961. A Tenant in Tail in the Mannor of *C.* in the Countrey of *W.* the

the reversion in the Crown; and in Fee of Lands in the County of D. and in C. aforesaid, and of Lands in the County of B. by his Will devised, that his Lands in D. which he appointed to be a third part of the whole, should descend to his Heir; the Manner of C. and all his Lands in B. he devised to his Wife, in recompence of her Dower, for Life, so long as she should be So'e, and then to his Son and Heir; and he charged his Lands in B. with Annuities to his younger Sons, and portions to his Daughters: Afterwards by a Codicill annexed to his Will, he devised to J. S. and J. D. and their Heirs, all and singular his Lands in C. whereof himself was then seised, to him and his Heirs in Fee-simple, to the use of his Son and Heir, so long as he and a'l claiming under him, should suffer his wife and children to enjoy the Lands and Annuities devised to them, and he should interrupt or deny it, then he devised all his Fee-simple Land to his Wife and his younger Sons: A. died, his Son and Heir within age: It was in this case Resolved, that the Queen by reason of the Wardship of the Heir should not have more of the Fee-simple Lands in D. then so much as would make the entailed Land to be the third part of the whole.

*Creswell's Case.*

962. Certain Lands called S. were holden of the Mannor of P. by rent and Suit of Court; P. was holden of the Mannor of G. by Rent, and Suit of Court; the Mannor of G. came to the Crown by the Statute of Dissolutions: The King H. 8. granted the Mannor of G. to J. S. and his Heirs, to hold by Knight Service in *capite*: J. D. purchased the Mannor of G. and afterwards he purchased the moiety of the Mannor of P. and the Lands called S. J. D. died, the Lands purchased by him descended to his Son, who purchased the other moiety of P. and afterwards enfeoffed C. of the Lands in S. It was Resolved in this case, that J. D. held the Lands called S. by Knight Service in *capite*, by a whole Knights Fee.

*Lamson's Case.*

963. It was Resolved in this case in the Court of Wards, that if the Jury do not find an Office according to the direction of the Court, they shall be committed to the Fleet; *vide* diverse Presidents there accordingly.

*Sir William Knott's Case.*

964. The case was, A. died seised of Lands purchased by him, and descendable to the Heirs Males of his Body, holden by Knight Service in *capite*, of the value of 140 *l. per annum*, and also of *capite* Land descendable to his Heirs general, of the value of 13 *l. per annum*, and an executed Estate for the advancement of his Sons of Soccage Land in *capite* to the value of 48 *l.* B. was his Son and Heir

Male, and the two Daughters of his eldest Son deceased, were his Heirs general. It was Resolved that no Livery nor Primer Seisin should be of the Lands executed for advancement, because the Queen was satisfied by the descent to the Heirs Males of the Livery and Primer Seisin, of more then of a third part of the Lands.

*Strangways and Sir Henry Newtons Case.*

*1595.* The case is very long put, but in effect was this: The Father linked divers Mannors and Lands by Indenture to the use of himself and his Heirs, untill the marriage of his Son with the Daughter of *J. S.* and after marriage, to the use of the Father for Life only, and after to his Sons Wife for Life, for her Joynture: The Father died before Marriage, and afterwards the Marriage took effect: The Question was if the use should rise to the first Wife. Note, That the Father before his death made his Will, and thereby devised portions to his Daughters, to be raised out of the said Land by his Executors, and then died, his Heir within age; The two chief Justices doubted much this case, but they inclined to be of opinion, that if there was a devise of the Land, that the same had interrupted the raising of the Future use for the Joynture, &c. but they doubted of the Devise, because he devised portions out of the Lands, but did not devise the Lands themselves.

*Framptons Case.*

*1566.* Assised in Fee of the Mannors of *M.* and *B.* and of the moiety of the Mannor of *V.* covenanted to levy a Fine to *J. S.* and others of the said Mannors, viz. of all the said Mannors to the use of himself for Life; and afterwards of the Mannor of *M.* to the use of *J.* his wife for her Life, and after to such Heirs of the Body of *A.* as he should afterwards beget of the Body of her, or of any other woman which he should after marry, and after to the use of *C.* in tail, and after to *D.* in tail, and after to the right Heirs of *A.* and of the Mannor of *B.* immediately after he the said *A.* should die without Issue of his Body, to the use of *E.* daughter of *J.* for her Life, and afterwards to *D.* in tail, and afterwards to *C.* in tail, and to the right Heirs of *A.* And of the moiety of the Mannor of *W.* and other the Premises of which no use was before declared to the use of the said *A.* and such Heirs of his Body, and after to the use of the said *E.* for Life, the remainder to *D.* in tail, the remainder to *C.* in tail, the Remainder to his right Heirs: Provided, That if at any time after he should be minded to revoke the said Indenture, or any use or estates therein contained, or to raise and create any other use or Estate, and should declare the same to any person, &c. in the presence of two Witnesses, then the Remainders and all other Estates in the said Indenture to be void, and the Conusees of the Fine so stand seised

seised to the use of the said *A.* and his Heirs: Afterwards *A.* reciting the former Indenture and the Proviso, in consideration of a Marriage between *J. D.* and the said *E.* did declare to *J. N.* in the presence of two Witnesses, that he did revoke and make void the former Deed, and every Article therein concerning the Mannor of *B.* but as touching the Mannor of *M.* that the same should stand in force, and by the last Indenture did covenant with *J. D.* and *E.* his Wife, that the Conusees of the Fine &c. should stand seised of the Mannor of *B.* and the moiety of the Mannor of *V.* to the use of the said *J. D.* and *E.* his Wife for their Lives, and after to the Issue of the Body of the said *J. D.* and *E.* as should be then eldest living at the death of the Survivors of them, for the Life of such Issue, and after to the use of the said *A.* and of such the Heirs of his Body, as he should after beget on the body of *J.* his Wife, or on the Body of any other woman which he should marry, and after to *D.* in tail, and after to *C.* in tail, the Remainder to the right Heirs of *A.* It was found that *E.* was the Daughter of *J.* but born before her marriage with *A.* *A.* and *J.* his Wife died, and found he married no other woman, and that *F.* was Son and Heir of *A.* and was of full age. The Questions in this long case were these, 1. Whether all the use and agreements in the first Indenture, as to the Mannors of *B.* and *V.* were revoked by the second Indenture. 2. Whether the new uses limited by the second Indenture, and such Revocation of the former uses, were effectual to convey any Estate to *J. D.* and *E.* his Wife, with the Remainder over, to take away the immediate discent from the Heir at Law: The case was argued in *B. R.* and the Justices were divided in their opinions; and afterwards it was adjourned into the Exchequer Chamber, but whether there Resolved or not, *Quere.*

Sir Arthur Gorges Case.

967. The case was, the Lord Viscount Brindon was seised of Lands holden of the Queen in *capite*; he had Issue *Doughtasse* his Daughter and Heir, who was married to Sir Arthur Gorge, and she by him had Issue *Ambrosia* Gorge; Sir Arthur married his Daughter *Ambrosia*, when she was above the age of eight years, and before she was of the age of nine years, to *Francis* Gorge, Son and Heir of Sir *Thomas* Gorge, who died before *Ambrosia* accomplished her age of eleven years: The Question upon the whole matter was, if the Wardship of the body of *Ambrosia* did belong to the Queen or not: It was Resolved in this case amongst other points, that the Queen should have the Wardship, in regard the Marriage was not a compleat Marriage, because the Husband died before the years of consent of *Ambrosia*.

## Barrens Case.

968. A seised of the Mannors of *O.* and *R.* and of Lands called *F.* in the counry of *Lanc.* holden in *capite*, 16 *Octob.* 19 *Eliz.* made a Writing purporting that he did give the said Mannors and Lands to *B. C. D.* and *E.* and their Heirs to the several uses, and under the agreements contained in a Schedule to the said Deed annexed; and by the Schedule he declared the uses to be to himself for Life, without Impeachment of wast; and afterwards of part of the Lands to *M.* his Wife for her life, and then to the right Heirs of *A.* with a Proviso, that if at any time after his Life, during the Life of the said *M.* the Heirs of the said *A.* or any claiming under his Heirs, trouble or disturb the said *M.* that then the said *B.* and other the parties should stand seised of the Lands in which she should be disturbed to the use of the said *M.* and her Heirs for ever. Afterwards the said *A.* made a Lease of the said Mannors and Lands to *J. S.* for 100 years, to begin after the death of *M.* *A.* died, *M.* entred. The Heir of *A.* after his death entred and disturbed *M.* contrary to the Proviso: It was Resolved by the Justices in this case, that the future use was checked by the Lease, although it was but *interesse termini*, and that the use to *M.* and her Heirs could not rise upon her disturbance, but that it was destroyed for ever.

## Vernons Case.

969. *Margaret Winter* Widow, the late wife of *Henry Vernon* seised of Lands in Fee, holden in *capite*, entcoffed thereof *J. S.* and others to the use of herself for Life, and after to *B.* her younger Son and the Heirs of his body, with divers Remainders over, with a Proviso if she should be minded to alter the uses, and signifie the same under her hand and Seal to her Feoffees, and tender to them 10 *l.* that then all the uses in the Indenture should be void, and her Feoffees should stand seised to such new uses as should be limited by the said *M. M.* according to the Proviso signified her intent, and tendred 10 *l.* to her Feoffees, and then declared that her said Feoffees should stand seised thereof to the use of *G. W.* for Life, the Remainder to the said *M.* for Life, the Remainder to *H. Vernon* her Son, and the Heirs of his Body: *Henry Vernon* died, having Issue a Daughter within age, and after *M. W.* died. It was holden clearly in the Court of Wards, that because there is no mention of any entry by the eldest Son and Heir, that the Estate which *Henry Vernon* had in Tail, was not avoided, and so by consequence the Daughter of *Henry Vernon* should be in Ward.

## Sir Robert Remington and Savages Case.

970. A levied a Fine of Lands to the use of himself for Life, the

the Remainder to his Executors for 20. years, the Remainder to his Son in tail, with diverse Remainders over; Afterwards he levied another Fine to all the said uses, but only the Estate for 20. years to his Executors, and made his wife his Executrix; the wife married Sir Robert Remington. It was adjudged in this case, that by the second Fine, the Lease for 20. years to his Executors was extinct.

*Littletons Case.*

971. A feised of Lands holden in *copite*, in consideration of a Marriage of *M.* his Daughter, with *W. L.* Son of Sir *John*, and of 1300 *l.* paid by Sir *John* the Father of *W.* levied a Fine of part of the Lands to the use of himself for Life, the Remainder to *W.* and *M.* and the Heirs of the Body of *W.* upon the Body of *M.* the Remainder to the right Heirs of *W.* and the residue to the use of himself for Life, the Remainder to his first Son in Tail, the Remainder to the right Heirs of *W.* with power to make a Joynture to his second Wife, and to make Leases for Twenty one years, or three Lives: The marriage took effect: *A.* took a wife and had Issue by her *J.* and died, *J.* his Son and Heir within age; *W.* died without Issue, *G. L.* being his Brother and Heir, the second wife of *A.* living, and also *M.* living. It was upon a *Motion Inquirend.* found that *M.* was the Daughter of *A.* It was Resolved in this case, that the Queen should have the Wardship of the third part of the whole Land, during the minority of *J.* the Son of *A.* Also it was Resolved by them, that although money was paid, and so the consideration of the Marriage, was a mixt consideration; yet that should not alter the Law for the duty to the Crown. 1. and one *Cissins* case was cited to have been so adjudged.

*The Lord Ross and the Earl of Rutlands Case.*

972. *H.* Earl of *Rutland* 2 *Eliz.* levied a Fine with Proclamation to the use of himself, and *B.* his Wife, and the Heirs of his own Body, and died: *B.* married the Earl of *Bedford*; they covenanted with *Edward* Earl of *Rutland*, Son of *H.* Earl of *Rutland* to levy a Fine, which Fine was levied with Proclamation *sur concessit* of the said Mannors and Lands, by the said *Edward* Earl, to the said *B.* for Life; Afterward *Edward* Earl of *Rutland* 29 *Eliz.* covenanted with the Lord *Burleigh* and others to stand seised of the said Mannors to the use of himself, and the Heirs Males of his Body; the Remainder to the Heirs Males of the Body of *Thomas* Earl of *Rutland* his Grandfather; *Edward* Earl 29 *Eliz.* died without Issue Male, having a Daughter, which was the Lady *Ross*, the Mother of the Lord *Ross* the Plaintiff; *B.* died; the entail made by the Earl of *Rutland*,



*Rutland*, and the descent to the Lord *Rofs*, the Plaintiff was found by Office : It was Resolved by the Justices in this case, That the Mannors did belong to the Plaintiff the Lord *Rofs*, as Issue in tail of *Henry* Earl of *Rutland*, notwithstanding the Fine levied by *Edward* Earl of *Rutland*, because the Fine being *sur concessit*, the same remained a Bar no longer then during the Life of *B.* Also they held the taking of the Fine by *B.* to be a surrender of her Estate, but to be no discontinuance, because not seised of the Tail at the time.

3. Resolved, the Lands should be in the King, during the Minority of the Lord *Rofs*.

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Anno 1. *Jacobi*.

973. It was Resolved by the Justices, that Informations for the Queen alone, in any *Latin* Court, should not abate by the Demise of the Queen ; and so like of Informations *tam pro* the party, *quam* for the Queen ; and so also it was of Informations in English Courts, they were not discontinued by the Demise of the Queen.

*Handall* and his Wife, and *Browns* Case in Chancery.

974. The case was ; *A.* possessed of a Term for years, had Issue a Son and two Daughters, and by Will he devised his Term to *John* his Son, and if he died, to his two Daughters, and if they died, to his Wife ; he made his Son his whole Executor, who entred claiming by the Will, and after Probate, he died Intestate ; his Wife took Letters of Administration, and for money sold the Term to *Brown* the Defendant. It was the opinion of the Justices, that the Assignee of the Administrator should have the Term, and not the two Daughters, and Decreed in Chancery accordingly.

975. Upon the cases of claims at the Coronation of the King, these points were Resolved by the Justices. 1. That where a Barony, or a Mannor, or Land holden by grand Serjeanty to do special Service at the Coronation, is come to many hands by purchase, there each Tenant is chargable with the whole Service, but the King may appoint which of them shall do the Service, and he which doth the Service shall alone have the Fee ; but if the Division be by Copartners, there the eldest is only to do the Service, and the other shall contribute to the charge, and the eldest shall have the Fees ; but if each Sister sell her part, the Feoffee of the eldest shall not have the preeminence. 2. Resolved where Grand Serjeanty is to be done at the Coronation by Tenure, and the Lands come to an ignoble person

person who is unmeet to do the Service, the Lord Steward may appoint a Noble or meet person to do the Service, as Deputy to the Tenant of the Land. 3. Resolved where Land is given to hold, as to be *Hofliarius Camere Regis*, or the like; In such Case the Tenants are to make their claims; yet they are not to be admitted to the said Services, by the Commissioners for claims, or the Lord Steward, but they are to be referred to the King himself, their Tenure being perpetual and continuing.

*Leigh and Helvers Case.*

976. A man supposing he had Title to certain Lands which were in the possession of *J. S.* contracted to sell them to *J. D.* and sealed a Lease for years to a third person, to the use of *J. D.* with whom the contract made, and the year and day long before expired. Resolved it was maintenance by the Common Law, but not within the Statute of 32. H. 8.

*Foster and Kings Case.*

977. A man made his Will, and gave diverse Legacies, and devised that the rest and residue of his Goods (after his Debts and Legacies paid) to his wife; and after in the same Will he devised, that his Overseers should enter into the Lands, and cut down so much of the Woods as would suffice to pay his Debts: *Quere* in this case if the Debts and Legacies shall be paid of the Woods, if the Goods be not sufficient to pay them.

*Skipwiths Case.*

978. Tenant in tail, and he in the Reversion bargaineth and sells the Lands to the King, and before enrolement, Tenant in tail suffers a common Recovery. *Quere* if the Issue in tail be barred by the Recovery; not Resolved.

*Lucas Case.*

979. Resolved in this case, that before the Statute of 13 R. 2. Murder was pardonable by the name of Felony, but since that Statute, the King cannot pardon Murder, by pardon of *feloniam*, & *feloniacam interfectionem*, without a special *non obstante* of the Statute.

980. Resolved by the Justices that if an Executor pay a Debt due upon a present Obligation, it is no *Devastavit*, though there be a Statute or Recognisance broken for not performance of Covenants.

*Ellis and Worges Case.*

981. Debt. The case was: *W.* was endebted to *A.* 100 *l.* upon an usurious contract; and *A.* was endebted to *E.* the Plaintiff 100 *l.* a just Debt, for which *W.* and *A.* were bound to *E.* In Debt brought upon this Obligation, *W.* the Defendant pleaded the Usury betwixt him

him and *A.* The Plaintiff said, that before that bond upon usury, *W.* was indebted to him and bound for his debt, and that he knew not of the usurious Contract betwixt *W.* and *A.* It was Resolved, the Obligation made by *W.* the Defendant, was a good bond *pro vito debito*, and that it was not usury in the Plaintiff, and the usurious Contract betwixt *W.* and *A.* should not prejudice the Plaintiff.

*Hall and Trussell's Case.*

982. Debt brought against the Defendant, the Defendant pleaded an Attainder of himself after the debt due to the Plaintiff; adjudged no plea.

*Oldcot and Levells Case.*

983. It was Resolved in this Case: That a Surrender by Tenant in Tail of a Copyhold, was not a Discontinuance; Also that a Surrender by Tenant for life to the use of another in Fee, was not a forfeiture.

984. Note, it was holden by the Court, That if one will turn the extent upon the extendors for extending the Lands or goods at too high a Rate, he must do it at the first day of the Return, or not at all.

*Griffith and Smith's Case.*

985. A man possessed of a Term for years of a Rectory and Lands, devised the profits thereof for so many years as he should live; and after he devised the profits to 20. of his poor Kindred, and that after the death of his Wife, the Rectory should be let by the advice of his over-seers, and the Rent distributed to his said poor Kindred, and made his Wife his Executrix: It was Resolved in this Case by all the Justices in the Exchequer Chamber, that although a devise of the profits is a devise of the Land it self, if there be no other circumstance in the Case; yet because in this Case, the deviser hath declared, that the poor Kindred should not have the property of the Term, and he appoints a Lease to be made for Rent, and the Rent to be distributed amongst them; that the Executors should have the Term upon the Consideration to make the Lease and distribution, and that the poor Kindred had only Trust and no Interest in the Term.

986. A man having spent his estate, and living in great necessity, said to his Wife that he was weary of his life, and that he would kill himself; The Wife said that then she would dye also with him; he prayed her that she would go and buy Ratsbane, and they would drink it together, which she did and put it in drink, and both of them drank of it; the Husband dyed, but the Wife recovered,

covered by vomiting: *Quere*, if it was Murder in the Wife. Not Resolved.

*Baker and Bacons Case.*

987. The King having by the Statute of Dissolution all the Tithes within St. Edmonds-Bury, granted *omnes decimas nostras grandium sani, &c. in Bury Sancti Edmundi. Ac omnes alias decimas nostras infra Bury prædictæ quas Eleemosynarius monasterii prædicti colligere solebat.* Resolved, that the Tithes passed, which the Almoner used to collect, and that the Relation is to be expounded to the *ac omnes alias decimas*, and not to the whole sentence.

988. Note Tr. 2. *Jac.* in the Star Chamber: It was Resolved by all the Justices of England, that the Deprivation of Puritan Ministers by High Commissioners for their refusal to conform themselves to the Ceremonies appointed by the late Canons was Lawfull; because the King hath the supream Ecclesiastical power, which he hath delegated to them by which they had power of the Deprivation by the Canons of the Realm; and the Statute of 1 *Eliz.* doth not give them any new power, but explaines and declares their ancient power. 1. Resolved, that the King may without Parliament make Institutions for the Government of the Clergy, and may deprive them if they do not obey them; and so the Commissioners, may deprive them, but they cannot make any Institution without the King. 2. Resolved, that to frame Petitions, and to collect hands of multitudes of people to prefer to the King publick causes, is an offence finable at discretion, and deserves the punishment next to Treason and Fellony, because it tends to raise Sedition, Rebellion and discontent amongst the people.

989. It was Resolved by all the Justices of England; That Clergy is not allowable for Piracy upon an Indictment upon the Statute of 28 H. 8. unlessse the Piracy be done in a Creek; in which the Common Law before the said Statute had Jurisdiction, but not if it be done in *alto mari*; for such is felony by the Civil Law, in which no Clergy was allowed. 2. Resolved, if the King pardon all Felonies by the Common Law or any Statute, Felony done *super altum mare* is not pardoned.

*Adynand Ayes Case.*

990. A *Fieri facias* went to the Sheriff to do Execution; he seized certain Wood, and after he was discharged of his Office, he sold the Wood for satisfying the Execution. It was adjudged, that the sale was good upon the Statute of 34 H. 6. *cap. 5.* because he was charged with the value.

*Sheldon and Handburies Case.*

991. A Woman in the time she was separated from her Husband, got a sum of money, and with it bought Lands, and took an Assurance thereof in the name of *B.* in trust; *B.* lying sick, at the request of the Woman, made a Lease for 200. years to *S.* the Plaintiff, upon condition he should pay the profits to the said Woman, and also if *B.* lived to the first day of *June* following, and then paid 12 *d.* to *S.* the Lease should be void; *B.* lived to the day but did not pay the 12 *d.* but afterwards for 100 *l.* he made Lease to the Defendant, with Covenants to save the Lessee from all Incumbrances; *B.* dyed, *S.* not having notice before of the Lease made to him entered: It was the opinion of the Justices in this Case, that the Lease made by *B.* to *S.* at the request of the Woman in part of the performance of the Trust, was not a fraudulent Lease within the Statute of 27 *Eliz.* to defraude purchaser; because he was in Conscience to perform the Trust, to one who did not direct any second sale; also at the time of the second Lease, the power to revoke was void, and the first Lease absolute.

*Holder and Farleyes Case.*

992. Resolved, that if a Woman be dowable of a Copyhold by Custome, if the Husband after the Marriage make a Lease for years, the Tenant in Dower shall not avoid it.

*Hall and Festiplaces Case.*

993. A man prescribed to make the first crop of the Hay in little Cocks: that is no good prescription, to discharge the Tythe of After-mouth; but other it is of a Prescription to make it into great Cocks, or to carry it into the Parsons Barn, the same is a good Prescription.

*Forsier and Bryons Case.*

994. Lessee for years devised his Term to his Wife for life, the Remainder to *A.* for life, if *J. S.* within two years after her death be not bound in 100 *l.* to pay 5 *l.* per an. to the said *A.* for her life, and if he do become bound, he devised the Term to the said *I. S.* and the Heirs males of his body, and if he dyed without Issue, he devised the Remainders: *A.* dyed within a Month, *J. S.* never entered bond but dyed having Issue male, and the Issue dyed during the Continuance of the Term: It was in this Case holden, 1. That it was a good Remainder. 2. That the Remainder limited to *J. S.* upon this condition precedent was good, and should take effect, although he never entered Bond; for he had time to do it within two years; and then when *A.* dyed within the two years, the Condition was discharged by the Act of God, and so the Remainder was good.

*Banks and Brown's Case.*

995. Copyholder for life surrendered to the Lord of the Mannor in Tail, the Reversion in the Crown; the Tenant in Tail made a Lease for three lives, the Lease to begin from the day of the Date; and the old Rent was Reserved and more; It was Resolved by the Justices, that it was a good Lease within the Statute of 32 Hen. 8. if Livery was made after the day of the date.

*Combes Case.*

996. It was Resolved by the Justices in this Case: 1. That the omitting of a thing or Legacy out of a Will, which is appointed to be inserted in it; is not Forgery; But if a man directs one who writes his Will to limit Land to one for life, the Remainder to another in Fee, and he leaves out the estate for life, so as the Remainder takes present effect, the same is Forgery. 2. If a man writes a Will without direction, and brings it to the Devisor who is *non compos mentis*, and he allows of it, the Will is void, but it is not Forgery. But if a man writes a Will with blanks, and then the Devisor is not of perfect memory, and the writer fills up the blanks; though this be not Forgery, yet it is a Misdemeanor punishable in the writer of it.

*Stokwells Case.*

997. It was Resolved in the Star Chamber in this Case; That a Purveyor or his Debury cannot take any thing by way of purveyance without shewing of his Commission. 2. That no Purveyor can take Wood or Trees growing upon the Land, without agreement made with the owne of the Land. 3. That no Purveyor can take any thing by Purveyance, which is provided by the Owner for his own provision, but of those who have the things to sell. 4. That the King is to have the preemption of all things put to sale before others, at reasonable Rate.

*Bellew and Brookes Case.*

998. The Plaintiff exhibited a Bill into the Star Chamber for the pulling up of 16. foot of hedging, for putting of his Cattel to take Common there: Both the Plaintiff and the Defendants were both Fined, the Plaintiff for the Suit being to small a Ryot, and the Defendants for the Act done.

*Holloway and Pollards Case.*

999. A. bargained and sold Lands to B. and his Heirs for 500 l. upon Condition that if he paid 500 l. he should re-enter and be seized to the use of himself and his Heirs, untill he should attempt to alien without the assent of the bargainee, then to the use of the bargainee and his Heirs; a Fine was Levied to the uses; the 500 l.

was

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Banks

was paid, *A.* aliened to *J. S.* and *J. D.* without the assent of the Bargainee: Resolved, that the use could not rise to the bargainee, because the bargainor entering for the Condition broken, was in of his old use and estate; and the bargainor who came in by the use of the Fine, could not stand seised to another use; for then there should be an use upon an use, which cannot be.

*Springs Case.*

1000. In a Case of a Prohibition: It was Resolved, that a Parson cannot prescribe against the Composition made by the Vicar, for things allowed to the Vicar upon Composition.

*Heywards Case.*

1001. *A.* acknowledged a Statute and dyed; Extent issued, he was returned dead; a new extent issued against his goods, it was Returned that his Widdow Administratrix had sold them; a new Extent Issued against her and her second Husband.

*Andrews and Lord Cromwells Case.*

1002. In the Case of a Writ of Right it was Resolved, That the demy mark may be rendered at the time of the appearance of the Jury. 2. That the Tenant shall begin first to give evidence. 3. That in this Action the Jury cannot finde a speciall verdict.

*Reyno'ds Case.*

1003. Resolved by the Justices in the Case of a Prohibition; That Tythes shall not be payd of the Lopping of Trees above the age of 20. years; but Tythes shall be paid of Acorns.

*Browne and Wottons Case.*

1004. In Trover and Conversion of Plate: It was Resolved, that it was was a good plea, that the Plaintiff had brought Trover and Conversion against a stranger for the same plate and had Judgment; But it is not so in Debt, where a certain sum is demanded.

*Richards Case.*

1005. He was sentenced in the Star Chamber for divers offences, 1. That he took divers sums of money from the Kings people, affirming to them, That the King had granted to him the penalty of penal Lawes, for which he had Exhibited Informations, whereas in truth he never had exhibited any Information; and that he being a Deputy Purveyor had charged the people with so great sums of money for purveyance of Beans and Oates, and to the purpose to take money for Composition, which money he divided bewixt him and others, and for divers the like Misdemeanors; In this Case it was Resolved; 1. That Purveyance was due to the King by Prerogative at the Common Law, 2. Purveyors cannot take Tolls growing

growing nor transplant fruit Trees, nor take without appellment, nor without shewing their Commission. 3. That their deputies were under the same penalties as the Masters were, and that the Masters should answer for the offences of their Deputies, for all the wrong done to the subjects. 4. That a Deputy could not make a Deputy. 5. That the selling of things which the Purveyors took by way of Purveyance was Felony.

*The Countesse of Rutlands Case.*

1066. Information in the Star Chamber against divers Serjeants at Law in London, for arresting the body of the Countesse. The case upon the matter appeared to be this. A *Capias* was awarded against the Countesse out of Common Pleas: In which Case it was Resolved, that upon such Writ, the Sheriff or his Officer might without any Offence by a Warrant arrest the person of the Countesse; for he is not to dispute the authority of the Court in awarding the process, but he is to execute the Writ to him directed: But because the Defendants did arrest the Countesse upon a feigned action, of their own heads without Warrant, They were fined and imprisoned by the Court.

*Day and Penkevells Case.*

1067. A bill was exhibited in the Star Chamber against the Defendant and divers others for several Offences. The Defendant for that he inserted the name of a special Bailiff, in a Warrant which was made by the Sheriff with blanks, without privity or direction of the Sheriff. Note in this Case it was holden, that where there are several Defendants, and one only is sentenced, the other shall have Costs, because not charged with the offence for which the sentence was, but with other Offences of which they were acquitted. 2. It was holden in this Case, that a Defendant shall not have benefit of a general pardon at hearing of the Cause, unless he prays the same upon his answer put into Court.

*clerks Case.*

1068. Note in this Case, being the Case of a Purveyor who was sentenced in the Star Chamber, for several Offences in executing his Office of Purveyor: It was said there were 7. properties incident to every Purveyor. 1. He ought to be sufficient to answer the King and the party. 2. He is to do his service in person, and not by Deputy, because it is an Office of Trust. 3. He is to be sworn in Chancery before he execute his Office, for he ought to have authority under the great Seal, with blank Labells to insert what he takes. 4. His Authority is to continue but six months without renewing. 5. He ought to take where is plenty, and in



Convenient time; and no more then is sufficient. 7. He is to take the things in kind, and not money for them.

*Little and Goldards Case.*

1009. The Case was: 1. The Grandfather had Issue two Sons T. and W. and by his Will devised to T. all his Mannors, Lands, &c. within the Counties of D. and C. viz. to T. and the Heirs males of his body (after his decease) for 500. years. Provided if T. or any Issue male of his body give, grant, &c. the premises or any part thereof, otherwise then to Lease and demise the same for any term or number of years; as may be determinable upon the death of any 2. persons, &c. to be made in the Leases, &c. then all the premises for default of such Issues males of the said T. to be begotten, &c. immediately upon such alienation, gift, grant, &c. shall remain and come to W. and to the Heirs males of his body, &c. The deviser dyed, T. entred and made a Lease for 1000. years to J. S. who never entred, T. dyed without Issue male, J. being his Daughter and Heir; W. dyed having Issue the Plaintiff, who entred, upon whom J. entred: In this Case it was Resolved in C. B. that the devise to T. and the Heirs males was an estate Tail, and the limitation for years void. 2. Resolved, that there ought to be a concurrence of death without Issue male, and also of alienation before the rising of the Remainder. 3. That the Remainder should never rise, because the particular estate was destroyed by the alienation before the Remainder could commence. 4. That the Lease for 1000. years made to J. S. was not an alienation within the Proviso, upon which the estate might rise to W. when T. was dead without Issue male, because that T. who made the Lease was but Tenant in Tail, and then the Lease was determined upon his death: It was the opinion of all the Justices in C. B. that the Judgment should be for the Defendant, upon which Judgment, the Plaintiff brought a Writ of Error in B. R. and there by all the Justices upon the matter in Law, the Judgment was reversed Mich. 3. Jan.

*Carpenter and Collins Case.*

1010. In Debt for Rent, the Case was; A. had a Son and a Daughter and devised, that his Son should have his Land at his age of 21. years, and gave 40 l. to his Daughter to be paid at her age of 22. years; and appointed that C. should be his Executor, and should have the oversight and dealing of his Lands and goods, till his Children should come to the ages aforesaid, and dyed: C. the Plaintiff made a Lease to the Defendant at Will, rendering Rent at Mich. and our Lady-day; the Daughter entred upon the Tenant at Will, the Tenant attorned to her, the Son dyed within the age of 24. years; the Defendant did not pay the Rent, for which C. brought

Debt

Debt against him: It was adjudged against the Plaintiff. Resolved, 1. The word Oversight and dealing with his Lands and goods did not give any Interest to C. the Executor, but an authority only, and that the estate descended to the Son. 2. That by the death of the Son the Interest of the Executor was determined; for it was not the Intent of the deviser to bar the Heir of the Son, untill the Son should come to the age of 24 years, if he lived. 3. That the Tenury at Will was determined by the entry of the Daughter, because she entered by Title i. e. as Heir to her Brother.

Lord Aburgavenny and Edwards Case.

1011. An Excommungement was pleaded in Bar; and the Certificate of the Bishop of Landaph shewed of it, but doth not mention by what Bishop the party was Excommunge; wherefore it was adjudged void.

Rastoll and Drapers Case.

1012. Debt upon an Obligation for payment of so much Flemish money, the Plaintiff declared for so much English money, and it was holden good by the Court.

Doyly and Drakes Case.

1013. A man had two Closes adjoining time out of mind, and sold one of them; who should make the Inclosure, the Purchaser or the vendor? the Court was divided in opinion. *Vide 21 Eliz. Dier. 372.*

Williams and Vaughans Case.

1014. *Scire facias* by the Plaintiff against the Defendant who was bail in Debt for J. S. who did not render his body nor pay the Debt; the Defendant demurred, 1. Because no *Capias* was sued against the principal; and also because the Principal was dead before the *Scire facias* brought; but both points overruled; because the Condition of the bail was broken before.

Whitlock and Hartwills Case.

1015. A and B Sisters Joynt Tenants. A. Covenanted with a stranger, that he should enjoy the moyety which she held with her Sister in Joynture for 60. years, from the death of her Sister, if she the said A. should so long live; and demised to him the other moyety from her own death for 60. years, if her Sister so long lived. Adjudged the Lease was void for both moyeties; the one because of her moyety after the death of her Companion, and the other is of the moyety of her Companion if he should live so long, which is but a possibility and not grantable; and it was Resolved, if one Joynt Tenant Covenant to stand seised of the moyety of his Companion, it is a void Covenant although he survive.

*Baxter, Woodward and others Case.*

1016. Action upon deceit, for deceiving the Plaintiff at Cards, at the game of Mountant, by bringing in a Card called the Bum-card; by which they devised, that the Plaintiff should have but such games as they pleased, by which Cosenage they deceived the Plaintiff of 16*l*. Upon Not guilty, it was found for the Plaintiff and damages Assessed; It was said the Action did not lye, no more then for false Dice: But Resolved the Action did lye, and so it was said it was adjudged in one *Richmans Case* who recovered 100*l*. damages upon such a Cosenage.

*Watham and Mulgans Case.*

1017. The Case was, the Owner of a Ship in the time of Queen Eliz. furnished it to Sea, with Letters of Marque to take the goods of the Spaniards, the Queens Enemies: The Mariners and soldiers without his directions, took a French Ship and the goods in it, the Frenchmen being then in Peace with the Queen: The point was if the Owner of the Ship should answer for those goods; It was said by Popham Chief Justice, That where the Master sends his Servant to do an unlawfull act, there the Master shall answer for the Servant; not where he sends his Servant to do a Lawfull act, as here the taking of the goods of the Queens enemies; there although he mistakes and takes the goods of the Queens Friends, the Master shall not answer for the goods: *Quere*, for that the Civil Law is, that the Master shall answer in all publike Cases.

*Gloves Case.*

1018. The Case was, a man who was presented by Simony, Libelled in the Spiritual Court for Tythes; The Question was, whether the Simony should be tryed in the Spiritual Court, or by the Common Law; The point is not Resolved. Note there Simony is defined to be *Studiosa voluptas emendi vel vendendi Spiritualia vel Spiritualibus annexa*: and it is either *Mentalis* or *Conventualis*, of both which the Spiritual Law may Judge; but the Temporal Court only of Coventual Simony.

*Talentre and Dentons Case.*

1019. The Bishop of *Carlise* was seised in Fee of Tythes in the right of his Bishoprick, and he made a Lease of them for three lives rendering the Ancient Rent, the Tythes having been usually demised for the same Rent: It was Resolved, that the Lease was not good against his successor, because he had not remedy for the Rent by distress or action of Debt; otherwise it had been only a Lease for years, for there debt lyeth for the Rent.

The

The Lord Stratton, and the Lord Mordant Case.

1020. The said Lords by Writ under the Great Seal, were commanded upon their Faith and Allegiance, that (*quacunq; causa & excusatione cessante*) to come to the Parliament, and there to attend the Affairs of the Parliament, which are *ardua Regni*; they made divers frivolous excuses; It was presumed that they had notice by some of the Gun-powder Traitors, they being of their Kindred and Alliance to absent themselves, and therefore to avoid the danger of their persons, they absented themselves, which if they knew of any Danger, they ought to have made the same known to the King or his Council; and upon Presumption also, because they were very conversant with some of the Gunpowder Traitors, and were often in their company, and divers Papists in their houses; and for this their contempt in not coming to the Parliament, they were Sentenced and Fined in the Star-chamber; and it was said in this case, that for the disobeying of the Kings Commands under his Privy Seal, several persons, Lands and Estates by Commission have been seized into the Kings Hands; as the Earl of Cornwall's case 4 H. 3. The Bishop of Winchester case 3 E. 3. and Sir Francis Eglesfields Case.

Stackwith and Norths Case.

1021. It was Resolved by the Justices, that the setting to Farm and sale of Offices was not *malum prohibitum*, against the Statute of 4 H. 4. c. 5. but *malum in se*, and therefore because the Sheriff of Nottingham took money for the Goaleiship, and the Bayliwick of the said County for one year, he was fined in the Star-chamber.

B. and Smiths Case.

1022. S. was deprived by the High Commissioners for not conforming to the Canons of the Church; it was general, *quia refectionarius*; but no particular Canon mentioned: The King by reason of the said Deprivation, presented B. who was induced, but S. would not yield up the possession of the Parsonage-house: A Writ of *Vi laica* issued out of the Chancery; the Sheriff came to the House, but could not apprehend the parties; B. finding the House empty, entered peaceably; S. made an *Affidavit* in B. R. that he was ousted by the Sheriff with force, and B. put into possession; the Court of B. R. thereupon granted a Writ of Restitution, he having an Appeal depending of the Deprivation: In this case these points were Resolved; 1. That the Writ *de vi laica remouenda*, is not returnable unless the Sheriff find the force. 2. That the Kings Bench cannot award Restitution upon an *Affidavit*, but there ought to be a Return of the Writ of *vi laica*, &c. in the Chancery; and upon *Affidavit* made there, that the Sheriff by vertue of the Writ, hath removed

removed one and put another in possession, Restitution is awardable. 3. Resolved, That upon a Deprivation by the High Commissioners, no appeal lieth, because the Commission is ground upon the Prerogative of the King, in the Ecclesiastical Government; and therefore the Commissioners being immediate from the King, and possessing his person, no Appeal lieth. 4. Resolved that the Canons of the Church, made by the Convocation and the King, without Parliament, shall bind in all matters Ecclesiastical, as well as an Act of Parliament: In the principal case it was adjudged untill the Deprivation was repealed; and adjudged it stood good, and so B. had good Title to the Church.

*Sydenham and Caps Case.*

1023. Tenant in Tail made a Lease for Life, to a Feme Covert, the Husband surrendered, and then Tenant in Tail made a Lease for three Lives, and died, the wife after the death of her Husband entered: It was adjudged that it was a good Lease for three Lives, within the Statute of 32 H. 8. and the Issue in Tail should not avoid it.

*Croft and Eveitts Case.*

1024. The case was; A. A Popish Recusant, intending to disinherit the Plaintiff his Heir being a Protestant, and to confer the Profits of the Lands upon such persons as were of his own Religion, by Indenture conveyed the Lands to divers persons, being Popish Recusants, and their heirs upon hope, trust, and confidence; and to the intent they should and would after the decease of him, and Jane his wife, yearly for ever give, bestow, and imploy all the Issues and Profits thereof upon poor Scholles in Oxon and Cambridge, or elsewhere; such as shall intend to study Divinity, and enter into Holy Orders according to the intent and true meaning of the said A. It was the opinion of the Lord Chancellor in the Chancery, and of the Judges Assistants upon the hearing of this Cause, and so Resolved and Deceaded, That the said conveyance made upon the hopes, trusts, confidences, and meanings aforesaid, were pernicious and dangerous to the State of the Commonwealth, and if the profits of the Lands should be imployed according to the hopes, trusts, and meanings before mentioned, the same would be bestowed upon Traitors, Jesuits, and Seminary Priests, and others Enemies to the Crown and Dignity of this Kingdom; and therefore it was Adjudged, and so afterwards Deceaded that all the before mentioned confidences, hopes, trusts, and meanings, were unlawfull and meerly void.

*The Lady Russell, and the Earl of Nottinghams Case.*

1025. The Lady Russell having the Office of the custody of the Castle of D. for her Life by Grant from the Queen Elizabeth, and the Earl

Earl having the Inheritance thereof, by Grant also from the Queen, the Earl sent his Servants with stuff to the said Castle, and with Householdstuff and Furniture to prepare for his Lodging there; the Lady *Russel* Servants denied them to enter, pretending the Lady was to have the use and disposing of it during her Life, and shut the Doors thereof: The Servants of the Earl opened the Doors with Iron Barrs, and afterwards entred. The Question was if the entry was a Riot in the Servants of the Earl; It was Resolved it was no Riot, because the Castle did belong to the Earl in Propriety, and the Lady having but the custody of it, with a Sallary, the Earl was always in possession; and when the Servants broke open the Doors with force, they were but Trespassors to their Master, and not to the Lady. And in this case it was holden by the Justices, That if one hath the custody of a castle or house for Life, and he denies the owner to enter into the Castle, and shut the Doors against him, that it is a forfeiture of the custody of the castle or house.

*Yelland and Fichis Case.*

1026. *A.* covenanted to stand seised to the use of himself for life, with divers Remainders over to others, to some for Life, and to others in tail, the Reversion to himself in Fee: Afterwards he made a Lease for years to a Stranger, and afterwards during the Term he revoked: The Court was divided in opinion, if his power of Revocation was not suspended during the Term: It was the opinion of *Coke* Chief Justice, he might revoke all the uses, but the Term.

*The Lord Greys Case.*

1027. The Lord, being Lord of the Mannor of *B.* the Tenants joyned in a Petition to the King for the custom of the Mannor, which custom they set forth to be, that after the death of the Tenant for Life of a Copyhold, the Lord is compellable to make an Estate to the eldest Son for Life, and if he hath no Son, to the daughter: They subscribed their name to a Blank, giving power to *B.* one of them to write what Petition he pleased, and they agreed in bearing of the charge of it rateably. It was holden by the Justices in this case, That the joyning in the Suir, and in the rateable charge, was lawful, but for subscribing the Blank, it was conceived by them, it was censurable in the Star-chamber, because it was an illegal combination, although the complaint be not censurable: But for the custom, the Justices were of opinion that the same was against Law.

*The Dean and Canons of Windsor, and Penzance Case.*

1028. The Dean and Canons made an agreement betwixt them by Lotts to have an assurance of a Lease to each of them of certain Possessions of the Church, the Lotts being cast so as each knew his Lease; They made the assurance in this manner, viz. The Corporation

ration entred into a Bond of 500 l. to the Canon, who was to have the Lease, and the Canon entred into an Obligation of the same Sum to pay to the Colledge 500 l. The intent of the agreement was that the one 500 l. should be estopped for the other 500 l. and the Corporation was to have only the 10 l. for the Lease. This Case being in Chancery, it was Decreed by the Lord Chancellor, That the Obligation of 500 l. made by the Dean and Canons to each Canon, was void by the Statute of 18 Eliz. which speaks of Bonds and Covenants to be void for making a Lease contrary to the Statute of 13 Eliz.

#### Huffey Case.

1029. Huffey a Bastard purchased a Mannor of the Queen, and made his Will, by which he devised the Mannor; Afterwards he made a Feoffment of the Mannor to the use of such persons, and for such Estate as he had declared by his Will. It was adjudged that the Feoffment was a countermand of the Will, and yet the Will was sufficient to declare the use of the Feoffment.

#### Shute and Mallorys Case.

1030. Lessee for 40 years of the Queen made a Lease for 21 years, rendering Rent, and afterwards granted *totum statum suum* to the Plaintiff, to whom the Lessee for 21 years refused to attorn, or pay the Rent. It was decreed in Chancery, that he should attorn and pay the Rent, because the Plaintiff had no means to compel the Attornment, and yet without Attornment, the Reversion to which the Rent was incident, was in the Grantee; and in this case it was said, that where a Rent was devised without distress, the Chancellor had power to compel the Tenant to pay it, and yet the Rent is in the Devise by the Devise.

#### Cole and Moores Case.

1031. A. possessed of a Lease for years, devised in this manner, viz. *I give and bequeath all the years to come, after my decease, in my Farms, &c. to J. M. to enjoy and receive the profits thereof during his Life, paying such Rents I am bound to pay, and all such Annuities as I have given, and such Estates as I do give by my Will; and if he die before the years to come in my Farms be fully expired, I give and assign the rest of my years to come, to my Son P. C. and the said P. C. shall then pay yearly to A. M. 26 l. during her Life, and if she die before her Husband J. M. then I give to E. M. 60 l. 13 s. 4 d. out of my Farms to be paid her during six years, and made F. M. her Executor and died. F. M. proved the Will, and had Assets 3000 l. P. C. made his Will in the Life of F. M. and there did bequeath to R. C. his Son, all the Lands leased, and all his Term of years, Estate, Life, Interest, to come and enduring: R. C. preferred his Bill in Chancery against*  
*F. M.*

*J. M.* for endeavouring to defraud the possibility, by conveying the Term away to Friends in trust for his own use: *J. M.* confessed the conveying to Friends in trust to his own use. The points; 1. Whether *R. C.* by the Will of his Father-in-law, or equity, be entitled to the possibility of the Term, that shall remain after the death of *J. M.* 2. Whether he may sue during the Life, of *J. M.* for this possibility: It was decreed in Chancery, 1. *P. C.* is *Cestuy que trust*, and although the possibility be not grantable nor divisible by Law, yet *cestuy que trust*, may declare his VWill, and so the VWill of *P. C.* doth amount to a Declaration of the Trust, and ought to bind *J. M.* the Executor. 2. That the acts of the Executor, tending to destroy the possibility, were breaches of the Trust. 3. That Suit for prevention of Fraud or breach of Trust, might be before the Trust doth fall to the intent to preserve the possibility.

The Bishop of *Sarum* Case.

1032. King Edward the Fourth, created the Office of Chancellor of the Garter, but did not annex any Fee to it, and constituted *B.* Bishop of *Sarum*, to be the first Chancellor during his Life; and further granted that the Successors of the Bishop of *Sarum*, for and after, should be Chancellors of the Garter. *B.* was received, and did execute the Office, and died Bishop of *Sarum* 22 E. 4. It did not appear that any Successor of the Bishop was admitted to the said office, but the Kings of England have placed Chancellors: If the Bishop of *Sarum* by Succession had title to the Office, was the question: It was Resolved he had no title to it; 1. because the Patent was originally void to make the Successor of a Bishop Officer: for *B.* took the Estate for his Life in his natural Capacity, and not in his politick Capacity, and he could not take both in his natural, and his politick Capacity together. 2. Because there had not bin any use or exercise of the Office by any Successors. 3. In this Case it was agreed, that the constitution of a new Office and Officer was good, though no Fee was annexed or given to it.

Tutton and Sir Richard Mollineux Case.

1033. A Lease for 99. years of the Rectory of *B.* by the Bishop of *C.* assigned the same to the Defendant and others, to the use of the said *A.* for Life, the Remainder to *B.* the Plaintiff, and to the Heirs Males of the said *B.* the Remainder to *A.* and to those he should assign the same by his Will, and for want of such Limitation, to the Executors and Administrators of *A.* *A.* assigned his Will, Interest, and Trust to *F. S.* *B.* by Decree at Chesser recovered the Rectory against the Assignee, paying 300*l.* *B.* required the Defendant to assign all the Term to him, and to such as he should appoint. It was in the Chancery Decreed that the Defendant should make the Assign-



Assignment to B. or to such as he should name, because the Limitation to B. of the Trust, and the Heirs Males of his body, resembled a Grant or Devise of the Term it self, to one and the Heirs Males of his body, which cannot be an entail, because against the Rules of Law, that a Term should be entailed, and therefore the Term for such Grant or Devise, rests wholly in the Donee or Devisee, and he hath the whole disposition of it, and such a Term shall not go to the Issue, but to the Executors of the Donee or Devisee.

*Boldrey and Curties Case.*

1034. A man covenanted to make farther assurance upon request be it by Fine, &c. The Plaintiff delivered to him a note of a Fine, and required the Defendant to acknowledge the same before the Justices of Assize, and he did not acknowledge it because no Writ of Covenant was first brought or depending: Resolved the Covenant was broken, because the acknowledgment of the Note for a Fine, is an Act preparatory for the Fine it self, upon which a Writ of Covenant may be after sued forth.

*Trot and Spurlings Case.*

1035. In *Audita Querela*; the case was, B. acknowledged a Statute to S. There was a defeazance of it, That if his Lands in the county of D. should be extended, the Statute should be void: Afterwards B. sold his Lands in the county of D. to F. the Plaintiff, which being extended, he brought *Audita Querela*: It was Resolved in this case by the Justices, that the *Audita Querela* did well lie; and F. should be relieved upon it, for they held the defeazance to be good, and not repugnant: They agreed that if the Condition of an Obligation be that the party shall not sue the Obligation, that the condition is repugnant; but a Defeazance by another Deed to that effect is good. It was adjudged for the Plaintiff.

*Swaine and Becketts Case.*

1033. The Queen seized of the Mannor of D. made a Lease thereof for years to F. S. excepting the Trees. King James granted the reversion to the Plaintiff; the custome of the Mannor was, that a Copyholder of the Mannor might top and lop Trees: The Defendant being a Copyholder, cut Trees for firewood, for which Trespass was brought: Resolved, that the Action did not lie, because the Copyholder was in by the custom which was paramount the exception of the Trees in the Lease, and the exception should not hinder the custom, although the Copyholder came to his Estate after the Exception.

The Countess of Cumberland's Case.

1037. It was Resolved by the Justices in this case, That great Beeches of 200 years growth, which were for use for Timber in the country where they did grow, could not be felled or taken by Tenant for Life, because they did belong to the Inheritance, and so they said it was of Wind-falls which had Timber in them, they did belong to the Inheritance; otherwise if they were Dorards; and had no Timber in them.

Lamb's Case in the Star-Chamber.

1038. It was Resolved by the Justices in this case; 1. That the Procurer and also the VWriter of a Libel, were both contrivers of it. 2. That if a man read a Libel, or heard it read, the same is no publication of it; but if after it is read he repeat it to another, it is a publication of it. 3. That he who writes a Libel by the commandment of his Master or Father, is not a publisher of it.

Stone and Walters Case.

1039. W. being robbed, accused Stone being a Poulterer, to be the party who robbed him; but afterwards withdrew his accusation. Stone not satisfied therewith, brought his Action upon the case against W. W. then accused him again of the Felony, for which he was bound over to the Sessions, where W. swore directly that S. was the party that robbed him; yet the Jury found an Ignoramus, so as S. was never Indicted, nor lawfully acquitted; Yet for this conspiracy to accuse him, W. and his confederates were all fined and punished in the Star-chamber: And in this case it was holden by the Justices, that such Conspirators were punishable by Indictment, although an Action upon the case did not lie for the party.

The Spanish Ambassador and Plager Case.

1040. Plager was pressed with his Ship at Lisbon to carry the King of Spains Soldiers to such a Port, and had their Letters from the Vice-Roy of Portugal to trade to Brasil; he performed the Service of Transportation, and 14 months after traded at Brasil, and freighted his Ship there for the transportation of Goods to Hamburgh, and was bound with Sureties in the Custom-house of Brasil, to pay the customs due to the King of Spain, at St. Michaels; the Ship by tempest was forced into England, and did not touch at St. Michaels: The Spanish Ambassador pretending the Goods to be forsent to the King of Spain, sued for them in the Admiralty here, and a Sentence was there for the King of Spain to have the Goods. Plager sued to the Lord Chancellor here, to have an Appeal from that Sentence, and an Appeal was granted him.

## Sir Thomas Palmers Case.

1041. Sir Thomas Palmer who was attainted of Treason in the time of Ed. 6. for natural affection 7 Ed. 6. by Indenture covenanted to stand seised to the use of himself for Life, the remainder to J. S. for Life, the remainder to the first Son of the said J. S. in tail, the remainder to his eighth Son; he was attainted before J. S. had any Son: It was Relolved that by the Attainder the Son of J. S. was barred which was afterwards born, and the Fee-simple was in the Crown discharged of all the Remainders.

## Jepps and Tunbridges Case.

1042. The Defendant delivered a brief of the cause to some of the Jurors impannelled, before they appeared for their Instructions; This was adjudged an offence for which he was Sentenced in the Star-chamber: And in this case it was Relolved, that the Plaintiff and Defendant himself may labor the Jurors to appear, but a stranger cannot so do. 1. That the writing of a Letter, or a request by words, by one not a party to the Suit, to the Jurors to appear, is Maintenance. 2. It is not lawful for the party himself to instruct the Jurors, either by writing or by word, nor to promise them any Reward for their appearance; for it is Embrocery in them, as well as in a stranger.

## Sir Tho. Dambridgecourt and Sir Anthony Ashley Case.

1043. The Defendant was decreed in Chancery to pay 1000 l. to the Plaintiff after the Decree; the Defendant procured the Son of Sir Thomas by a Letter of Attorney which he had from his Father to agree only the Suit for 200 l. whereof 100 l. was paid in hand, and the rest to be paid at a day certain to make a Release, which the Son did in his own name, but not in the name of his Father. It was the opinion of the Justices and also of the Lord-Chancellor, that this Release was void.

## Crew and Vernons Case in the Star-chamber.

1644. Sir Randalph Crew and all those whose Estate &c. he had in the Mannor of Crew, time out of mind, &c. had had Turf to burn in the House of Crew-hall, in a great Waste called Okebanger Moor; being interrupted, he sued in the Exchequer at chester, whereupon Affidavit of the possession 60. years; his possession was established. After the hearing of the Cause there, Vernon interrupted the servants of Crew, and with Harrows tore the Turfs, for which cause a Bill was exhibited in the Star-chamber against the said Vernon and others; they put in a scandalous Answer, saying that the Judge at chester, ought not in Justice have made such an Order, and called the Affidavit an equivocating Affidavit, and affirmed the owners of the Mannor of Crew had taken the Turf but by License; and Vernon affirmed

affirmed to the Court that he had a Release to shew for the discharging of the Prescription, but no such Prescription could be shewed, nor was, but a Grant of Turff to be there taken: In this case it was Resolved by the Court, the Prescription was not determined by the new Grant, but the Grant ensued as a confirmation, and so the title of Prescription remained. Resolved that the words spoken of the Court of Chester, were very scandalous, and the Affidavit which he called an equivocating Affidavit, was approved by the whole; wherefore the Defendants were sentenced and fined by the Court, and the defendants were to acknowledge their offence to the Court of Chester.

Sir Anthony Barker's Case.

1046. J. S. exhibited a Bill in the Star Chamber against Sir Anthony Barker, and divers other Gentry of Credit, and charged the Defendants with the forging of the Will of M. P. and with many undue practices in drawing the said M. P. to make such a Will. At the hearing of the Cause, the Plaintiff relinquished the Forgery, confessing it was no Forgery, but would have insisted upon the practices of the Defendants for drawing the said M. P. to make the Will. The Court refused to permit the Plaintiff to insist upon the practices, for if he would have insisted upon the practices, he ought to have confessed the Will, and then have shewed the undue practices used to draw her to make such Will. Wherefore the Plaintiff was fined 200 £ to the King, and the Court gave Damages to each of the Defendants, and the reason why they gave damages they declared to be, because the Bill being scandalous, no action lay for the Defendants at Law, because the Bill was preferred before competent Judges to punish the Offences if there had been any, and therefore it was reason by reason of such defect of the Common Law in giving damages, the Court having Jurisdiction of the Cause, supplied the said defect.

Goodricks Case.

1047. Goodrick at a Tavern said to D. being a Master of Arts at Cambridge, That there was late a great Consultation before the King, how the Archbishop of Canterbury and the Earl of Northampton Lord Priory Seal, because the Archbishop informed that since the said Lord had been Warden of the Cinque Ports, there were more Jesuits and Seminary Priests come into the Realm, then before; which he said was the Newes of the Court. Another offence was, That Ingram a Merchant had heard at Lignae in Florence, by two Students out of the Colledge at Rome, that the Earl of Northampton writ a Letter to Cardinal Bellarmine, to pray him that no answer should be made to his book, which he had written upon the Treason of Garnet the Jesuite, because he writ it only ad placandum Regem

*Regem & faciendum populum*; The Defendants were found Guilty upon their Confessions: It was Resolved by the Justices, it was a slander within the Statute of 2.R. 2. which moved sedition betwixt the King and his Nobles; and that although the publisher did produce his author of such false newes, yet he himself was punishable; and if one saith there is common Rumor that such a one hath done such an act, an action upon the Case lyeth, although he doth produce his Author: And in this Case it was agreed, that if one sayes to another the effect of a Libell or false Rumor, although he produceth his Author, yet he is fineable.

*Damus's Case.*

1038. The Case was; I. S. was indebted to M. 1800 l. upon a Statute, who dyed Intestate: A. his Wife took Administration of his goods: and married B. and during her Coverture made her Will; by which she appointed to her Kindred 400 l. in Charitable uses. *Proviso*, if any crosse in Law, or losse of the said Debt of 1000. should arise, it should fall upon the last 900 l. mentioned before the *Proviso*, of which 900 l. the 408 l. the Charitable use was the last. A. dyed. Administration *de bonis non, &c.* of M. was committed to D. which had of the Debts 2000. besides the 1800 l. upon a Commission upon the Statute of 43 Eliz. of Charitable uses, against D. it was Decreed for the Charitable uses, to which Exceptions was taken, 1. That A. had not power to make a Will of this Debt. 2. That the 2000 l. were desperate debts. 3. That there was a crosse in this Debt, there being a Suit by the next of Kin to revoke the Administration committed to D. Upon the exceptions it was Decreed in Chancery with the Assistance of the Judges 1. That though the Will of A. was void in Law, yet it would serve by the Statute if there was assers of that estate, or of the estate of A. her self to support the Charitable use; For the goods in the hands of Administrators are all to Charitable uses, and it is the Office of the Administrator so to imploy them, and the Children or Kindred have no property in them, but under the Title of Charity. 2. Because it appeared, that at the time of the making of the Decree, that the estate would bear both the Legacies and the Charitable use, also with an Overplus, and if any of the debts of the 2000 l. became desperate, it was by the negligence of the Administrators and should not retard the Charitable use.

*The King and Howards Case.*

1049. In this Case, these points were Resolved by the Justices. 1. A man makes a Feoffment of Lands in 5. Counties with a Condition of Re-assurance; a Re-assurance is made of Lands in 5. Counties; It is a breach of the Condition but only for the Lands

in one County, and a good performance for the other. 2. Tenant in Tail, Remainder in Tail, Remainder in Fee; he who hath the Remainder in Fee, grants it to the first Tenant in Tail; this acceptance of the Deed, is an Attornment which shall bind those in the Remainder. 3. If an Act of Parliament be certified into the Chancery, no averment shall be against it, that it was not an act of Parliament, because the Commons did not assent to it, but with a *Proviso* which is lost; but if it appeareth in the body of the Act, that the Commons did not assent, the Act is void.

The Case of the Commissioners of Sewers.

1550. Upon complaints against divers ill disposed persons, of Suits and vexations by them against the Commissioners of Sewers, and their Officers, for the counties of *Northampton, Huntingdon, Cambridge and Lincoln*: It was holden by the Lords of the Council, the Commissioners of Sewers may make new works, as well to stop the fury of the waters, as to repaire the old, when necessity requires it. 2. That for the safety of the Country, they may lay a Tax or Rate upon any Hundreds, Towns, or Inhabitants thereof in general, who are interessed in the Benefit or Loss, without attending a particular Survey or Admeasurement of Acres when the Service is to have a speedy and suddain execution. 3. That they have sufficient power to imprison Refractory and Disobedient persons to their Orders, Warrants, and Decrees: and that Actions of Trespass, False Imprisonment, &c. brought against the Commissioners or their Officers for extremity of their Order or Warranty, are not maintainable, nor will lie.

*Goodson and Duffield's Case.*

1551. Error of a Judgment in a Court of Pipowders in *Rochester*. The case was; *A.* dwelling in the Town was bound to pay *B.* 150 *l.* the first day of *May*, at the House of *B.* in *Rochester*; the Bond was sued there 24. *September* in the Court of Pipowders; the Defendant pleaded payment at the House; Issue upon it; It was found for the Plaintiff: Error brought and assigned, that the Prescription was alledged to hold a Court of Pipowders before the Mayor and two Citizens; and by the Plea it appeareth it was holden before the Deputy of the Mayor and two Citizens. The Court held the same to be Error. 2. Error; The Issue was misjoyned; for the payment is alledged at the House of the Plaintiff in *Rochester*, and it ought to have been pleaded *apud Rochester in domo mansionali* of the Plaintiff. This the Court conceived to be Error, and the Judgment was reversed.

*Billingsby and Hercys Case.*

1052. A Demise was made of Lands in *D.* for years; by the word Demise and to Farm, let the Mannor, and also all Timber, Trees growing upon the same, with an exception of six Oaks, during the Term; the Term was assigned to a Feme Sole, who took Husband; the Plaintiff and they assigned all their Interest to the Defendant, reserving the Wood and Trees; the Husband died, his Executors cut down the Trees; the Wife brought Trespass: It was adjudged the Action did not lie, because no propriety in the Trees passed by the words, Demise, Grant, and to Farm Let, though there was Liberty to Fell and Sell.

*Price and Almeries Case.*

1053. A possessed of a Term for Forty years, devised the same to his Wife if she should live so long; the remainder to *I.* his Son, and the Heirs of his Body, and made his Wife his Executor, who entered and claimed the Term as a Legacy; the Son died in the Life of the Wife; the Wife died: the Executor of the Son entered: Adjudged his Entry was not lawful, because the Son had not any Interest, but a possibility.

*Edwards and Denton Case.*

1054. A man seised in Fee of the Mannor of *D.* and of an house, called *W.* in *D.* and also of a Lease for years in *D.* by Deed did grant, bargain, and sell the Mannor of *D.* and all his Lands and Tenements in *D.* to *J. S.* and his Heirs: It was adjudged that the Term for years did not pass, for the intent appears that nothing shall pass, but that which the Heir might take, for that the *Habendum* was to him and his Heirs.

*Sir William Waller and Hangers Case.*

1055. The case was; King *Ed. 3.* reciting that he had of every 10. Tun of Wine imported, a tun; and of every 20. Tun, two Tuns, one before the Mast, and another behind the Mast, granted to the citizens of London, that *Nulla prisagia sint soluta de vinibus circum & liberorum hominum London.* The Husband of the Defendant a Freeman and citizen of London, having Wines in the Port, and others upon the Sea; died and made his wife his Executrix: An Information was against her for not paying of Prisage; she pleaded she was *Libera famina de London*, and pleaded the Charter of *1 E. 3.* vide the Charter at large put in this case in *Buttrodes Reports.* It was after many long Arguments adjudged in this case, that the husband of the Defendant, was a compleat citizen in every respect, and that those Wines remaining in the hands of his wife, were *bona circum*, and so within the discharge to be freed from the payment of Prisage.

*Wheler and Heydon Case.*

1056. Debt upon the Statute of 2 E. 6. for not setting forth of Tythes, and declared that J. S. was Parson of S. and let him the Rectory for six years, if he so long lived and continued Parson there: It was found that the Parson made the Lease for six years, and the words, *if he continued Parson there*, were omitted in the Lease. It was the opinion of the Justices, that this variance betwixt the Lease and the Declaration, and the Lease found, is all one in substance, and the addition in the Declaration, is no more then what the Law *tacite* implies.

*Heydon, Shepherd, and others Case.*

1057. Error in Parliament: the case was; In Assize brought against the Defendant, Judgment was given for the Plaintiff; he brought Error in the Kings Bench, and there the Judgment was affirmed, and upon that Judgment he brought Error in Parliament. It was Resolved that a Writ of Error did not lie in Parliament to reverse a Judgment given in the Kings Bench, in Error brought there, for that there is a double Judgment; and the reversal of a Judgment in a Writ of Error given, shall not reverse the first Judgment, but that execution shall issue upon the first Judgment in the Assize.

*The Case of the Sheriffs of Bristol.*

1058. The Commissioners upon the Statute of Bankrupts, committed a Bankrupt to their custody for refusing to be examined upon Interrogatories, and they let him escape; whereupon Action upon the case was brought against them. It was objected the Action did not lie, because he was not committed till satisfaction of the Debt: But Resolved the Action did well lie, the commitment being only for refusing to be examined upon Interrogatories, although it doth not appear what the Interrogatories were, so as the Court might judge whether they were lawful or not, for they shall be intended lawful till the contrary be shewed.

*Hill and Hawkes Case.*

1059. Trover and Conversion of four Bushels of Wheat; The Defendant justified that the Bayliffs of L. time out of mind, had used to choose one to be Bell-man, for keeping the Market-place clean, and the Bell-man and his Predecessors had used time out of mind, &c. to take out of every Sack of Corn which contained more then a Bushel, a Quart for the Toll of the corn brought in Sacks to the Market to be sold, and that he was chosen Bell-man by the Bayliffs, and that the Plaintiff brought a Sack of corn, containing four Bushels to be sold, and he took a Quart for Toll: It was adjudged a good custom, although the corn was not sold, but only brought there



to be sold; but without a special custome, Toll shall not be paid of Corn brought to sell, if it be not sold.

1060. Debt upon an Obligation; The Defendant pleaded *non est factum*; it was so that the Bond was sealed and delivered by the Defendant; but that afterwards, viz. *Vicecomiti Comitatus Oxon*, without the privity of the Plaintiff were interlined in a place not material; wherefore adjudged it was a good Bond; but if it had bin in a place material, or with the privity of the Plaintiff the Obligor, the Bond had bin void.

*Poole and Godfreys Case.*

1061. Action upon the case against the Defendant, a Sommoner in the Spiritual Court, and having a Citation against the Plaintiff, he returned that he had summoned the Plaintiff, whereas in truth he never summoned him, for which the Plaintiff was excommunicated to his great damage. It was adjudged that the Action did lie.

*Mansfields Case.*

1062. Information against him, because he being a Recusant convict, went five miles from the place of his confinement; he pleaded a License of four Justices of the Peace; but because he did not show that he did take the Oath of Allegiance before the License, nor that the License was granted by the privity of the Bishop or the Lieutenant, the Plea was disallowed.

*Jisson and Bryns Case:*

1063. Debt in *Yarmouth*, there the Bail was taken; The Cause was removed in B. R. and there new Bail found, and the same Term a *Procedendo* was awarded. Adjudged the first Bail should stand; and was not discharged by removing of the Record; but otherwise, if the *Procedendo* had been awarded in another Term.

*Wrights Case.*

1064. It was Resolved in this Case, That if any English Court holds Plea of a thing whereof Judgment is given at the common Law, a Prohibition lies upon the Statute of 27 E. 3. cap. 1. and 4 H. 4. cap. 23. And therefore whereas the Plaintiff brought Trespass in B. R. and Judgment was against him, and after he exhibited a Bill in the Court of Dutchy for the same matter, a Prohibition was awarded.

*Worrall and Harpers Case.*

1065. A seised in Fee of the Mannors of G. and N. both holden in *capite*, covenanted to stand seised of G. to the use of himself and his wife, and the Heirs Males of their two bodies, the Remainder over in tail; and of N. to the use of himself and his wife for their

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Lives, the remainder to the Heirs of his own body. Afterwards he purchased Soccage Lands, and devised that they should be sold by his Executors, who sold them to the Plaintiff. It was Resolved that the Devise was good for two parts of the Soccage Lands only, and not void for the whole Soccage Lands; for they held that the Reversion expectant upon the Estate tail of the Land holden *in capite*, was a good Impediment to devise more then two parts of the Soccage Lands.

*Glanvilles Case.*

1066. The case was: A Jewel of Gold with a Diamond was sold by *Glanville* to *Courtney*: It was affirmed by *Glanvil* to be a good Diamond, whereas it was but a Topaz, so as *Courtney* was deceived; for the Jewel was sold to him for 300 l. whereas in truth it was not worth 30 l. *Glanvil* got a Judgment in the Kings Bench against *Courtney* for 800 l. upon *non suum informatus* by assent of the parties, Upon a Bill preferred in Chancery, and upon examination of the cause it was decreed, that *Glanvil* should take back the Jewel, and should have a 100 l. and should acknowledge satisfaction of the Judgment, which he refused to do, and for breach of this Decree, he was committed, and upon an *Habeas corpus* brought in B. R. he was discharged; and it was said a Suit in Chancery after a Judgment at the common Law, and to be reversed, was not good by the Statute of 27 Ed. 3. and the Statute of 4 H. 4. and divers Presidents cited to that purpose.

*Apseys Case.*

1067. He was brought by a *Habeas corpus* to the Bar: It was returned that he was committed by the Court of Chancery for a contempt to the Court: Resolved he should be discharged; vide 9 Eliz. *Astwicks* case accordingly; vide 13 Jac. *Allen* and *Woods* case; *Allen* was committed to the Fleet by the Lord Chancellor for a contempt in not performing of a Decree, and upon that Return the Court refused to deliver him.

*Deytons Case.*

1068. He was committed to the Fleet by the High Commissioners for not performing of the Orders in the Common Prayer, and for refusing to answer to Articles exhibited by the Commissioners, unless he might have a copy of the Articles: Resolved he should be delivered, because the Statute upon which he was sued in that Court, is penal, and also because perhaps the High Commissioners had not jurisdiction of the cause.

*Brokes Case.*

1069. He was committed by the High Commissioners to the Fleet, because he refused Alimony to his wife, and that being returned upon an *Habeas corpus*, he was delivered.

*Isaack and Clerks Case.*

1070. *Action de Trover and Conversion*: The case was; A recovery was against A. in the Court of E. and a Precept in the nature of a *Fieri fac.* directed to the Defendant, Bayliff of the Court, who took three Butts of Sack in Execution. The Plaintiff came to the Defendant and delivered him 22 L. in a bag, as a pledge that the three Butts should be delivered to the Defendant the next Court day there upon Request; if the Plaintiff who recovered should not in the mean time be satisfied at the next Court; the Butts were not redelivered, nor the first Plaintiff satisfied, nor any Report made: It was Resolved that there was no Conversion in this case; for although *prima facie* Denyer is a conversion of money, yet when the money is delivered as a Pledge, it is a special bailment, and Denyer in such case is no conversion. 2. That the Plaintiff had no cause of Action, because the three Butts being not Re-delivered, the Defendant might detain the 22 L. and the Bag for ever. 3. There needs no request in this case, because the Plaintiff at his peril, is to cause them to be delivered, before he is enabled to have his money again. It was adjudged for the Defendant.

*Ford and Hoskins Case.*

1071. *Action upon the case*; that the custom of the Mannor of B. was that every Copyholder might name who should have his Copyhold, and that the Lord ought to admit the Copyholder so named after the death of the Nominator; which the Lord refused to do. It was Resolved the action did not lie, for that the Nominatee hath no right at all, the Interest being in the Lord, and the Nominatee hath neither *jus ad rem*, *neq. in re*, and he shall not draw an Interest to himself from the Lord against his Will; and if one hath the Nomination, and another hath the Presentation to a Benefice; if he who hath the Presentation, will not present, an Action upon the case will not lie against him.

*Brownle, Cop, and Mitchell's Case.*

1073. *Assise against the Defendant for a Disseisin made to the Plaintiff of the profits of the Office of making Superfedear*: The King directed his Writ to the Justices, reciting that he by his Letters Patent, had granted the making of *Superfedear* to the Defendant, and required the Justices not to proceed *Rege inconsulto*: It was argued that the Writ did not lie, because the King had not any title to the thing in demand, nor could any prejudice come to the King:

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On the other side it was said, That in common Right, it belonged to the King to make Grants of Offices Ministerial and Judicial, unless another made Title to the same by Charter or Prescription; and if the Plaintiff had title to the Office or not, it is matter of Title for which the King is to have search in Chancery; and if nothing be found for the King against the Prescription made by the Plaintiff, then a *Procedendo* shall issue out of the Chancery; otherwise if title be found for the Patentee against the Prescription. Afterwards the *Superfedeas* was allowed by the Court, and afterwards the matter was ended by composition.

*Ketchwicks Case.*

1073. It was holden by the Justices, if an Infant brings Error to reverse a Fine levied by him, and he is inspected, and witnesses produced to prove his Infancy, though he dieth after before his full Age, his Heir may reverse the Fine.

*Gold and Deaths Case.*

1074. Debt upon an Obligation; the Condition was, That if the Apprentice shall lose and embessel any of the Goods of his Master, and the Master prove the same to be true by confession, or other then if the Obligor pay all Sums as the loss shall amount unto, the Obligation to be void: In the case the Master brought in the confession of the Apprentice himself, under his Hand and Seal. It was adjudged, that it was a good and sufficient proof, and it was holden the proof might be in the Action brought.

*Pheps and Winscombs Case.*

1075. In False Imprisonment; The Question was, whether a Constable may make a Deputy to arrest one by a Warrant to him directed by a Justice of Peace, the constable himself being sick; and whether upon the Defendants pleading in such case of the Statute of 7 Jac. cap. 5. he shall have double costs. It was Resolved he may make a Deputy, and a Deputy is within the meaning of the Statute, for he is a Constable *pro tempore*.

*Smith and Bulls Case.*

1076. In Assault and Battery; The Defendant justified that the Plaintiff entred his Close, and that he *molliter imposuit manus* upon him: It was said he ought to shew what estate he had in the Close, and that the Plaintiff came there to eject or disseise him, otherwise the Justification is not good.

1077. Tenant in Tail made a Feoffment in Fee to the use of himself and his Heirs, and afterwards made a Lease for years rendring rent and died, and the Issue accepted the Rent: It was adjudged that the acceptance of the Rent, did not continue the Lease, because the Issue was remitted to the Tail by descent.

*Roe and Woods Case.*

1078. It was holden by the Court, that whereas the name of the Sheriff was not endorsed upon the *tales de circumstantibus*, that was no cause to stay Judgment, because the Statute which gives *tales*, doth not provide for such Return, and also because it is done in the face and view of the Court, and of the Judges, and therefore not to be doubted, but the Sheriff made the Return.

*Luke and Clerks Case.*

1079. If the Defendant challenge the Array for Consanguinity of the Sheriff which is found against him, and after he challenge the Poles; Resolved he must shew cause of challenge, of every one of them presently.

*Blandford and Blandford. Case.*

1080. The Grandfather possessed of a Term for years, devised the same to his Wife for Life, the Remainder to his Son T. and L. his wife, if they have Issue male; and if it shall please God to send them Issue Male, then it to be reserved and put out for the benefit of such Sons or one of them, and died. The wife entered as Legatee, and died, and after T. and L. had Issue Male. It was Resolved that the Issue Male should have the Term, and was not restrained to any Term, to be born in the Life of the wife; and it is a good Devise to the Issue Male, though the Term be not expressly devised to the Issue Male.

*Curtys Case.*

1081. Assault and Battery by husband and wife, against the Defendant a Constable, and two others; The Defendant justified that the wife was presented in the Leet to be a common Scold, and the Steward made a Warrant to the Constable to punish her according to Law, and the Defendants went to the Plaintiffs house to execute the Warrant, and the wife assaulted the Constable, wherefore he commanded the other Defendants to lay hands upon her, which they *moliter* did: It was holden by the Justices to be a good justification, although they neither shew the day when the Leet was holden, nor that the Plaintiffs house was within the Jurisdiction of the Leet, nor shewed the Warrant of the Stewards, for that these were all but Inducements to the Justification.

*Herbert and Bingham Case.*

1082. Error to reverse a Fine, because the Writ of Covenant bare *teste* after the *Dedimus potestatem*; the Defendant pleaded the Land descended to him within age, and prayed his age. It was Resolved by the whole Court, he should have his age, because he was Terre-tenant, otherwise he should not have his age in Error.

*Harveys Case.*

1083. In Dower Judgment was given by default; Error assigned, that the Tenant was within age. Adjudged no Error, for age is not grantable *in favorem dotis*.

1084. A Justice of Peace recorded a Force, but did not Fine or commit the Offenders. It was adjudged that in such case the Record of the Force was void, and the Offenders upon that Record, cannot be afterwards Fined nor Imprisoned.

*Moody and Garnons Case.*

1085. A man made a Lease for years of Land, part Fee-simple, and part in Lease for years rendring Rent, and if it was behind 40 days, it should be lawful to restrain, and if there should not be sufficient, then to reenter. Resolved it was not any condition because restraint is not limited to any thing which should be restrained as in Land or chattel, and it shall not be taken to distrain, and also because no person is expressed who should reenter.

*Caries and Franklyns Case.*

1086. A seised in Fee made a Feoffment to *J. S. Habendum* to him and the Heirs of his body, to the use of him, his Heirs and Assigns. It was adjudged he was Tenant in tail, because the use to him, his Heirs and Assigns, shall be intended such Heirs, which he had limited before, which are Heirs of his Body.

*Buckham and Dendriges Case.*

1087. Debt upon Obligation; The Defendant pleaded to the Jurisdiction, that he was a Tinner, and pleaded the Grant of King Edward the First, that the Tanners of *Cornwall* should be sued for contracts rising within the Liberty of the *Stanneries*, and not elsewhere, and the contract upon which the Debt was brought, did arise within the Liberties, &c. It was Resolved a good Plea, but then he must show the Patent or Charter.

*Barrey and Perins Case.*

1088. Debt upon Obligation: The condition was if the Obligor stands to the Arbitrament of four men, so as the same be made by four or three of them, &c. then the Obligation to be void; the Arbitrament was made by three. It was Resolved the Arbitrament was good, for upon consideration of all parts of the Submission, the intent appears that four or three might make the Arbitrament, and Arbitraments shall be taken by Equity; so as all parts may stand.

*May*

*Mary Powell and Hermons Case*

1089. A sentence was in the Ecclesiastical Court that upon a Contract, the Defendant should Marry the Plaintiff; he did not do it, for which cause he was Excommunicated. The Defendant Appealed to the Delegates, which was remised to the first Court who sentenced him againe, and there also he was excommunicated for not performance of the Sentence. He Appealed to the Audience and then had absolution. He was taken by a *Capias Excom.* upon the first excommunication, upon an *Habeas Corpus*. It was Resolved, that the absolution for the Latter had not purged the first Excommunication; *quia Ecclesia decepta fuit.* 2. That the Appeal did not suspend the Excommunication, although it might suspend the Sentence.

*Don Diego Serviente de Acune and Giffords Case.*

1090. The Plaintiff Embassador for his Master the King of Spain, recovered in an Action upon the Case; the Defendant brought Error, and removed the Record; and then upon the second *Scire fac.* the Bail brought in the body of the Defendant. Resolved 1. That the removing of the Record, did not so stop the Court, that they could not accept of the body of the Defendant in Execution. 2. Resolved that the body might be accepted only upon the first *Scire fac.* and not upon the second.

*Roe and Ledshams Case.*

1091. In False imprisonment in the *Stannary* Court, The Defendant said the imprisonment was at *Totnes* out of the Jurisdiction. Issue being upon it, the *Vilne* was from *Totnes*, and not *de Corpore Comitatus*, and adjudged good, upon Error brought.

*Mosslyn and Pierces Case.*

1092. The Plaintiff recovered 100*l.* damage against the Defendant in *B. R.* in Assault and Battery; and had the body of the Defendant in Execution. The Defendant brought *Audita Querela* in Chancery that the principal had paid the money, and thereupon had upon Sureties, found a *superseas* to the Sheriff, commanding him to discharge the Plaintiff out of Execution, but the Sheriff did not obey it. He brought *Habeas Corpus* in *B. R.* and had another *Audita Querela*, and prayed he might be bayled, but the court would not grant it, without *Affidavit* of payment of the money. *Chief Justice* said, upon a Judgement in another Court *Audita Querela* did not lie in Chancery.

*Eliz. Wilmots Case.*

1093. She brought Trespasse by the name of a Widow, the Defendant said she was a Feme Covert, *viz.* the Wife of *J. Wilmot* who  
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was living at *Lisborn* in *Perugall*. The Plea was disallowed by the Court, for impossibility of Tryall.

*Simonds Case.*

1094. Trespase for Batterie, and entering his Close in *B*. The defendant justified the entry, because it was a Copyhold within the Mannor of *W*. in *W*. and to the Battery pleaded Not guilty; upon which the Issue was joyned. The visne was *de B. & de Manerie de W. in W*. It was Objected, it ought to have been of *B*. only where the Batterie was; also *de Manerio de W. in W*. is double and uncertain. But the Court held the visne good because the Custom might come in Question: 2. because the adjunction *de in W*. the Town is not but to make a certainty of the Mannor, for there may be two and Mannors in *W*. one within it, and another wwithout it.

*Havison and Haxleys Case.*

1095. The defendant was Bail for *B*. in an Action brought by *I*. *S*. against him who recovered and had Judgement, *B*. brought Error pendant the suit. *I*. *S*. dyed, the Debt nor paid, his Administrator brought a *Scire fac.* against the Bail, who pleaded the release after the Error brought both to him and the principal, *B*. of all Executions and Deeds. It was adjudged a good barre, because the duty and debt remained notwithstanding the Error brought.

*May and the Sheriffs of London Case.*

1096. Action upon the Case against the defendant for suffering one whom they had arrested upon a Bill of *Middlesex* to escape: The defendant said that the Prisoner was rescued from them, and adjudged no Plea, and so it was said it was adjudged, *Pasc. 43. Eliz. in Wals. Lamberts Case*, which *vide Cro. 3. part. 867.*

*White and Halls Case.*

1097. The Guardian recovered in Debt upon an Obligation made to an infant, the Defendant payd the principal and costs; and prayed the Guardian might acknowledg *satisfactio curia*, they can acknowledg satisfaction, for so much as he returned, and for so much they ordered him to acknowledge satisfaction, and that no execution should issue for the rest.

1098. A man devised Lands in *London*, to his Son and heirs, after the death of his Wife, and if his Daughters overlived his Wife, Son and his heirs they should have it for his life, and after their deaths *I. S.* should have it paying 6. l. yearly to the Company of Merchant Taylors *London*, to be bestowed in Charitable uses. Resolved that the Wife hadan estate but for life by Implication; 2 That the Son had Tail by Implication, and not Fee-simple; for as long as the Daughters lived, the Son could not die without heirs collaterall. 3. That the estate to *I. S.* after the death of the Daughters was a Fee-simple



ple by reason of the annual payment of the money. And in this case it was said that a Devise to *A.* and his successors was a Devise in Fee-simple.

*Justin and Monks Case.*

1099. *Scire fac.* Against the Bail upon the Statute 3. *Jac. c. 8.* the Defendant pleaded that after the Writ of Error allowed, and before any default, the principal rendred his Body in Execution; adjudged a good barre, for notwithstanding the Writ of Error may render his body, and so excuse his Bail.

*The Sheriffs of London and Michells Case.*

1100 Debt for 12. l. for their Fees upon the Statute of 28 *Elix. cap. 4.* for doing Execution; The Statute is they shall not receive *ultra* such a sum. The Court said that implies that they may take so much as is not prohibited; and although the Statute doth not give an Action for it, yet because it is a duty, an Action is given them by Law.

*Linghill and Broughton Case.*

1101. Action upon the Case against an Administrator, that the intestate was indebted to the Plaintiff 100 l. and the Defendant his Administrator affirmed that if the Plaintiff would forbear him *per rationabile Tempus*, he would pay him, and alledged he forbore him 8. years: Verdict for the Plaintiff; It was said in stay of Judgement the Declaration was not good, because not shewed how the Testator was Indebted. Resolved that he need not do because the promise of the Administrator is a sufficient acknowledgment of the debt. 2. That the forbearance *per rationabile Tempus* uncertaine, and adjudged the forbearance *per paululum temporis* was not good: The Court said, they might Judge of the reasonableness of the time, not of the meaning of *paululum temporis*, and 8. years is a reasonable time of forbearance; it was adjudged for the Plaintiff.

*Babington and Lamberts Case.*

1102. Assumpsit: In consideration the defendant had received 24 l. of divers persons for the Plaintiffs use, he promised to pay it such a day; it was said the Declaration was not good because not expressed of what persons he received the money; but it was adjudged good because a consideration executed, and so not traverisable.

*Calimore and Jensions Case.*

1103. Assumpsit: In consideration that the Defendant upon an *Infimus Computaverunt*, the Defendant was found indebted to the Plaintiff judged a good Consideration.

*Philpot and Ballards Case.*

1104. Resolved in this Case, that if a Judgement be given against the Plaintiff and others in an inferior Court, as a Hundred Court; one of them only if he be sole Tennant and hath the Damage, may have a false judgment and restitution; and it was holden that although the Judgement was given upon a customary claim, and not upon any matter at Common Law, yet false Judgement did lye.

*Eman and Mouldsworths Case.*

1105. A Prohibition was granted in C. B. because the Plaintiff sued for defamation in the spiritual Court, because the defendant had reported that he was incontinent. It was said although the Plaintiff alledged a general pardon, yet this being a private Case, the pardon did not discharge it.

*Pease and Meades Case.*

1106. Condition of a Bond was, that the Obligator should pay such a summe to such a person, at such a place and day as the Obliger should name by his Last Will in Writing; he names none but makes the Plaintiff his Executor and dyed. It was adjudged the Executor was not an assignee, and so the Obligation by the Omision of the Obliger is discharged.

*Yardly and Elices Case.*

1107. Words spoken of an Attorney to his Clyent, viz. Your Attorney is a bribing Knave, and hath taken 20l. of you for a bribe to cozen me. Adjudged the Action did lye for the words.

*Fryer and Gildrings Case.*

1108. Two men were bound to a third person joyntly and severally; the Obligee made the Wife of the Obligor his Executrix who Administred, then the Husband of the Obligor made her his Executrix and dyed, having assets to pay the debts; then she dyed, and the Plaintiff took Letters of Administration of the goods of the Obligee not Administred, and brought debt against the Defendant being the surviving of the Obligor. It was adjudged that the Action would not lie, for the making of the Wife of one of the Obligors Executrix was a suspension of the Action, and a personall Action once suspended by the Act of the party as it is here, it shall be extinct for ever. *Quere.*

*Norton and Syms Case.*

1109. Debt upon Obligation for performance of Covenants, the Defendant being under-Sheriff to the Plaintiff Covenanted; That he would not execute any Writ of Execution above 20l. nor any *venire fac.* in severall Causes, and also to acquit and save harmeleis the Plaintiff of all escapes of Prisoners taken in Execution; and of all fines

finer and amercements. Resolved in this Case when there are in an Indentures Covenants in the Negative for not doing, and in the Affirmative for doing, he is to plead specially to the Negatives that he hath not broken them, and to the Covenants in the Affirmative, that he hath performed them. 2. When the Covenants Negative are against Laws, and the Affirmative Lawfull, there he may plead performance generally, and the Court is to take notice that the Covenants in the Negative were void and against Law. 3. That the Covenants that he would not do any Execution, nor Execute any Writs here as *venire fac.* were against Law. 4. When some Covenants are void by the Common Law, and others not void, an Obligation taken for the performance of Covenants stands good for those that are good, and not for the other.

*Gresley and Luthers Case.*

1110. Assumpsit: The Defendant was a Suitor for Marriage of the Daughter of I. S. the Mother of the Daughter was solicited by the Defendant for her assent and furtherance of the Marriage; and the Defendant promised that if she would agree, that her Daughter should Marry the Defendant, that he would give to the Mother 100l. she gave her assent and the Marriage took effect. It was Resolved, that the Agreement of the Mother was a sufficient consideration to ground the Assumpsit upon.

*Folkers and Jacksons Case.*

1111. *Scire fac.* Against an Executor to have Execution of a Judgement against the Testator; the Defendant pleaded that the Testator was taken in Execution for the same Debt, and dyed in Execution. It was Resolved, that was a discharge of the Debt. *vide Laud and Williams Case. Pasch. 44. Eliz.* adjudged accordingly.

*Harecote and Wrenhams Case.*

1112. The Case was: The Father in his life time had conveyed a Lease in Trust to F. and made his Son his Executor; who recovered 100l. in Chancery against F. which he had and came to his hands as Executor. The Question was, if this 1000l. should be Asssets in the Executors hands; Resolved it should be Asssets.

*Selby and Chutes Case.*

1113. The Lessor Covenanted that the Lessee should enjoy the Land, without the disturbance, Let or hindrance &c. of the Lessee. The Lessor sued the Lessee in Chancery suggesting the Lease was made to him in trust to try a Title onely. In Covenant brought the Lessee assigned this in breach of the Covenant, Adjudging no breach because it was a Suite in Equity, and not at Common Law.

Sir Henry Rolls and Sir Robert Osborn and his wives Case.

1114. *Warrantia Charta* against Husband and Wife, that the husband and wife levied a Fine, 2 Jac. to the Defendant and his Heirs with Warranty; the Defendant pleaded that the same Term, a common Recovery was had by a Stranger in a Writ of entry against the Plaintiff, who vouched the husband only, which Recovery was to the use of the Plaintiff for part of the Land for his Life, with divers Remainders in tail, with the Remainders in Fee, to the Plaintiff and his Heirs. In this case these points were Resolved; 1. the wife one of the Defendants died, pendant the Writ, that the Writ should not abate because the Warranty was by the Husband and Wife, so as by the death of the wife, the Warranty as to her, was determined, and it stood for the Husband and his Heirs. 2. Resolved that the Warranty was determined by the Severance and Division of the Land. 3. Resolved that if the Plaintiff be impleaded in which he might vouch, if he did not vouch, that he might have *Warrantia charta*. 4. Resolved that because it appeared by the Plea in Bar, that the use of the Recovery was to the Plaintiff but for Life, so as the Plaintiff is in of another estate, that he could not have a *Warrantia Charta* to recover upon a Warranty in Fee. It was adjudged against the Plaintiff.

*Cornden and Clarke's Case.*

1115. *In Ejectione firme*; the case was; A seized of Lands in Fee in Soccage, had Issue 1. his Son and E. his daughter, who was married to I. D. by whom she had Issue two daughters M. and F. he made his Will and devised out of his Lands Annuities to his Grand-children M. and F. and gave a Legacy to G. his brother of 20 l. and his Lands he devised thus: *My meaning is, that my Land I now stand seized of, and that of right I have, shall descend to J. my Son, but my Executors shall take the profits of it, till his age of 24. years. Provided, if the said J. die without Issue of his body, then the Land go to the right Heirs of my name and posterity, equally to be divided, part and part like, and then to the said M. and F.* J. died without Issue, G. his brother entred and made the Lease: It was Resolved in this case that the Devise to the right Heirs of his name and posterity was void, and by consequence the Reversion in Fee descended to J. his Son, and from him to his two Daughters, as his general Heirs, and that appeared to be the intent of the Devisor; for he did not intend his brother should have the Land, for the words be *part and part like*, and he did not intend his two daughters should have the Lands, because he devised them Annuities.

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*Rowth and the Bishop of Cheshers Case.*

1116. It was Resolved in this case, that after an Induction, an Institution is not to be examined in the Spiritual Court, but by a *Quare Impedit* only: But yet the Justices if they see *causa*, may write to the Bishop to certifie concerning the Institution.

*Tislate and Sir William Ejex Case.*

1117. Covenant was brought upon the words *Covenant, Premise, and Agree* that the Lessee should quietly occupy and enjoy the Lands demised for, during the term of Seven years, and the Plaintiff shewed that a Stranger entred upon the Land, but did not shew that he entred by title, and for that cause it was adjudged against the Plaintiff, and the difference was taken betwixt a Covenant implied, as here it was in the words *demise, &c.* but upon a Covenant expressed, there the Lessor is to gard the Land against every person.

*Harrington and Deans Case.*

1118. Account: *A.* was indebted to the Plaintiff 200 *l.* The Plaintiff required the Defendant to receive it of *A.* and prayed the Defendant to borrow so much for him, and pay it to the Plaintiff: the Defendant did borrow 200 *l.* of *J. S.* and *A.* was bound for the repayment of it. It was adjudged that the Defendant should account for this mony, for that he had a Warrant from the Plaintiff to receive the mony of *A.* and by the direction of *A.* he received it of *J. S.* for *A.* therefore he was to account for it.

*The Earl of Cumberland and Countesse of Cumberlands Case.*

1119. Waste in 3. Several Townes *A. B. C.* There were 29. Issues joyned, and tryed 14. for the Plaintiff, and 14. for the Defendant: One was if certaine Oakes cut down were employed in reparation of the Castle of *A.* which Issue was tryed with the Defendant. It was moved in stay of Judgement, that the Visne was of the Town of *A.* where it ought to be of the Castle: The Court held it to be a Mis-tryal, although it was tryed for the Defendant who moved the Exception.

*Cooper and Andrews Case.*

1120. Prohibition upon a *Modus Decimandi* in a Park, the Vicar had 25. yearly, and the Shoulder of every third Dear killed in the Parke, the Parke being Dis-parked, the Vicar sued for Tythes in kind. The Court was divided in opinion: *Nichols* and *Hobart* Justices, that notwithstanding the Dis-parking, the *Modus* did remaine *winch* and *Warburton* Justices, that by the Dis-parking, the prescription as to the *Modus Decimandi*, was determined & that Tythes should be paid in kind. *Quere:*

*Cuddington*

*Cuddington and Willms Case.*

1121. Action upon the Case for calling the Plaintiff Thief; the Defendant justifies that he had stolen the Sheep of I. S. the Plaintiff said that before the words were spoken, he was pardoned by the general pardon, and pleaded the Pardon; adjudged the Action did lie by reason of the Pardon.

*Pope and Skinners Case.*

1122. The Case was more fully reported in *Hobarts Reports* 73. and was this. In a Replevin, the Defendant avowed as a Commoner taking the Cattle damage feasant. The Plaintiff said that A. was seised of an House and Land wherein he had Common, and devised the same to him the 30th. of March 11. Jac. to hold from the Feast of Annunciation next for a year; The Avowant traversed the Lease *modo & forma*, Issue was taken and found thereupon. That A. made a Lease to the Plaintiff 25. of May. for a year thence next ensuing. It was holden, that although this be not the same Lease, that the Plaintiff pleaded. Yet the Court gave Judgment for the Plaintiff, for the substance of the Issue is, whether the Plaintiff have such a Lease from A. or not, as by force thereof he might have Common; which appeared he had, and the *modo & forma* in the rest is not material; but yet it was said he must not depart altogether from the forme of this Issue; for if it had been found that he had right of Common by a Lease from another, it would not have served his turn, for that had been clear out of the Issue, both for matter and form.

1123. Debt upon an Obligation. The Obligation was in *Obligefimis Libris*; Yet the Court held the Obligation to be good.

*Sparke and Parnells Case.*

1124. A. seised of Gavelkind Land had issue 3. Sons, and devised to each of his Sons a several part, and if any of them dyed without Issue, the other should be his heir. It was adjudged Tail in each of them, and the Fee simple by the word Heir, in the other.

*Slawny and Elbridges Case.*

1125. It was Resolved in this Case. That the Ordinary cannot take an Obligation of the Administrator, after the Debts and Legacies paid, but the residue of the goods shall remain at the appointment of the Ordinary.

*Weaver and Wards Case.*

1126. Batterie, the Defendant justified, that he being a Training at a Common Muster as a Soldier discharged his Gun, *& per injuriam*, hurt the Plaintiff, and traversed that he was guilty, *aliter vel alio modo*, adjudged the Justification was not good, because he ought to have

have further said, that he could not otherwise avoid the fact; and when he justifieth the whole fact, there needs no traverse.

*Pye and Cookes Case.*

1127. Two persons exhibited, two several informations against an Ecclesiastical person for taking a Lease for years, contrary to the Statute of 21. H. 8. It was the opinion of the Court, they being exhibited at one time and for one thing, the Defendant was not Answer to any of them.

*Pitts and James Case.*

1128. The Case was; The Hospital of Donnington in the County of Berks, was founded by the name of Minister *Dei pauperis domus* de Donnington, and they made a Lease of parcell of the Lands of the Hospital in *English*, Minister of the Almshouse of God of Donnington besides Newbury in the County of Berks. It was holden the seeming variance did not hurt nor avoid the Lease; for if they do agree in Common understanding, it shall be good; vide the same Case, Hil. 43. Eliz. in Banco Regis, Sherborn and Lewis Case.

*Robins and Barnes Case.*

1129. In a *Quod permittat* for erecting of an Newfance 20. foot in length, and 8 in breadth; It was Resolved by the Court, that if one be owner of 2 Houses, and one doth a Newfance to the other, and the owner sells the house which makes the Newfance, that the vender shall never abate the Newfance.

1130. Words spoken of I. S. he was in prison for stealing of Horses, adjudged an Action lyeth for the words; otherwise it is if but for suspicion.

1131. In an Assise the Writ was *Recognitionem (illum)* where it should have been (*illam.*) It was amended.

*Lampleigh and Braithwaits Case.*

1132. Assumpfit. B. having killed a man, required the Plaintiff to do his endeavor to get his pardon; for which he went to the King to Royston and obtained the pardon. In consideration the Plaintiff had done his endeavour, the Defendant promised him 200l. It was said it was no good consideration, because the consideration was executed before the promise. But Resolved, the Action did well lie; because there is a Request before the endeavor had; and then the Assumpfit subsequent, after the Consideration executed, is sufficient.

*Taster and Salters Case.*

1132. *Batterie*. The Defendant justified that he was a Copyholder and that the Lord of the Mannor for him and his Copyholders had a way, over the Land of the Plaintiff who was also a Copyholder of the Mannor; and that he going in the way was resisted by the Plaintiff, for which *Molliter* he laid his hand on him, upon which they were at Issue. It was agreed by the Court, that the Lord of the Mannor could not have a way over his own Land. 2. Agreed although the verdict passed upon a void Issue, the same was not remedied by the Statute of 31. H. 8. Wherefore a Repleader, was awarded.

*Vinham and Kemps Case.*

1134. *Quare Impedit*, the Plaintiff counted that he was seized of a Mannor with an Advouson appendant *viz.* to present every first Turn. It was said the *viz.* was void and made the Count insufficient because it crossed the premises, but the Court Resolved that the Count was good.

*Coxes Case.*

1135. Words spoken of an Attorney, *viz.* *Thou art a Common maintainer of Suites and a Champerter; I will have thee thrown over the Barre the next Terme.* Adjudged the words were Actionable.

*Small and Dales Case.*

1136. *A.* seized of Lands in *Copitie* had Issue, *B.* his Son and Heir, and *E.* a Daughter by one woman, and two Daughters by a second Wife, and *W.* a Son by a third Wife, and devised all his Lands to his Wife *durante viduitate*, and dyed; the Wife entred and dyed, *B.* before any entred dyed. It was Adjudged the Will was void for a third part, and that the entry of the Wife in the whole made her seized but of two parts in Common with the Son of the third part and that the entry of the Wife vested such a possession in Common, with the Son to make a *possessio fratris* in the Sister of the whole blood to inherit against the younger Son.

*Henningham and Burrowes Case.*

1137. *Trespas* in *K.* The Defendant justified by a title as parcell of the Mannor of *Stamford Hall* in *W.* and one *venire* was of awarded from *K.* and *W.* both, and holden good.

*Anderson and Robinsons Case.*

1138. The *Habeas corpora*, was returned *album breve*, without any Endorment. *Curia advisare vult* if it shall be amended. *Hill 12. Jac.* *Wilby and Gummys Case* was vouched where it was ruled, it should not be amended; but a *venire de novo* awarded.



## Marshall and Stewards Case.

1139. Action for words, viz. *The Devil appeareth to thee every night in the likeness of a black man riding upon a black horse, and thou conferrest with him, and whatsoever thou doest ask he doth give it thee, and that is the reason thou hast so much money, and this I will justify.* Adjudged the Action maintainable for these words (thou conferrest with him) for that is Felony by the Statute of 1. Jac.

## The Weavers of Newburies Case.

1140. They were incorporated, 1. Jac. with power to make By-laws, They made an Ordinance that none should exercise the Trade of a Weaver within the Town, unless he had bin an Apprentice within the Town seven years before, upon pain of 5l. They brought Debt for a penalty of 5l. Resolved the Action did not lie for being incorporated within time of memory, and after the Statute 5. Eliz. they had not power to make By lawes, also because the By-law was unreasonable.

## Skaisfes and Nelsons Case.

1141. Action against Husband and Wife for slanderous words spoken by the Wife, and verdict being for the Plaintiff, Judgment was against the Husband and Wife, and that the Wife should be amerced; upon which Error was brought, for that both should be amerced; but because the Paper book of the Attorney was plain without rasure, that they should be both amerced: It was said to be the Omission of the Clarke, and the Record was amended.

## Digby and Fitzherberts Case.

1142. *Quare impedit.* The Plaintiff Counted, that A. was seised in fee of the Advowson, and presented B. and afterward granted to him the next avoidance, and that B. dyed, and the Defendant did disturb him to present. The Defendant said, that Sir. Tho. Fitz, was seised in Fee of the Advowson, and granted it to Rich. Fitz, who gave it to A. for the life of one I. S. by force of which A. presented B. and then granted the next Avoidance to the Plaintiff, and I. Fitz, having the remainder in Fee limited to him after the death of A. granted the same to the Defendant, after which B. dyed, and the Defendant presented A. *absque hoc quod A. tempore concessionis* of the next Avoidance of the Plaintiff was *seisium* of the Church in Fee, the Plaintiff maintained his Title, and Traversed *absque hoc* that A. was seised for the life of I. S. upon which it was demurred. The Court was divided in opinion. Warberton and Winch said the last Traverse was Idle, because the Plea had confessed and avoided it. Nicholas and Hobart contrary. The better opinion seemed to be, that to confesse and avoid and also to Traverse is the most sure way of pleading,

ding, vide *Newman*, and *Mores Case Trin*, 13. *Jac.* in C.B. Pas. 37 *Eliz.* *Cotesale* and *Woodrofs Case* in a *quare impedit* accordingly, and *Sherley* and *Bowyers Case*. If the thing which is Traversed is a point material, the Traverse is well added to the Plea; otherwise if it be of a thing idle and trivial.

*Brown and Goldsmiths Case.*

1143. The Dean and Chapter made a Lease of the Mannor of D. to I.S. excepting the Courts and perquisites of Court. It was Resolved, that the Exception was void as to that Court; but as to the perquisites of Court the Exception was good: and it was Resolved, That for the perquisites of Court no distress was to be had; but Debt did lie for them: but in this Case it was Resolved, that the King might Lease a Mannor, excepting the Courts, and such Exception was good.

*Day and Savages Case.*

1144. Trespass for taking a bag of Pepper. The Defendant Justified as servant to the Mayor and Commonalty of London, for Wharfage; The Plaintiff said that the Custome did not extend to him being a Freeman who ought not to pay Wharfage. The Defendant said the Custome did extend to him as well as strangers; upon which Issue was joyned. Resolved that the Custome should not be tried by the Certificate of the Recorder, as the usuall course, is but should be tried by the Country, because the Mayor & Comonalty were parties, and that the *venire fac.* should not Issue to the Sheriff of London or Middlesex, because the Tryals there are by Freemen; but should be to the County adjoining, viz. Surrey and Wendates Case. 40. *Eliz.* was vouched to be adjudged accordingly.

*Stoner and Gibbons Case.*

1145. Debt against an Administrator; after demurrment Administration was repealed and granted to another. Resolved that he should not plead that Plea after a demurrer, but after Issue joyned, such a Plea was good.

*Seal and Oxonbridges Case.*

1146. Wast. The Plaintiff made Tittle, that I. S. infeofed another to the use of the Plaintiffs and his Heirs, but did not say that he enfeofed the other and his Heirs; and yet it was holden to be good.

*Bird and Haines Case.*

1147. Debt upon an Obligation; acceptance of a Bill sealed after the Obligation was pleaded in Bar for the same Debt, and adjudged no Plea.

The Chancellor and Scholars of *Oxford*, and the Bishop of *Norwich* and others Case.

1148. *Quare impedit*. The Plaintiff Counted upon the Statute of 3 *Fac.* that 1. S. being owner of an Advouſon, 2. *Fac.* was a Recuſant convict, and that after the Church became void, and ſo they by the Statute ought to preſent : One of the Defendants pleaded That the Advouſon was Appendant to a Mannor, and that two parts of the Mannor were ſeiſed into the Kings hands by proceſs out of the Exchequer, and that the King by his Letters Patents granted the two parts to the Defendant with the appurtenances, and granted alſo all hereditaments; but Advouſons were not mentioned in the Letters Patents, and ſo ſaid the preſentation did belong to the Defendant; It was Reſolved that the Advouſon did not paſſe by the word appurtenances, without mention of Advouſon, or words *Ad ea plena & integrè, & in tam amp'a modo & forma*, as the Recuſant had the Mannor.

*Wood and Sherlyes Case.*

1149. The Husband Tennant in Tail, the remainder to his Wife for life, he made a Feoffment to the uſe of himſelf and his Wife for the Joynture of the Wife; and after dyed without iſſue. Adjudged the Joynture pleaded was no Bar in Dower brought by the Wife, becauſe the Wife was remitted, and in of her former eſtate.

*comyn and Brandlyns Case.*

1150. A Term for years upon an *Elegit* was apprized at 100*l.* and delivered in Execution to that value. A *ſcire fac.* brought to have reſtitution of the Term, becauſe the Plaintiff had levyed the 100*l.* of the profits of the Lands: Reſolved he ſhould not have reſtitution, but if at the time of the Appriſement, and before the delivery he had rendered the money, either in Court or in paire, he might have *Audita Querela*.

*Girryes Case.*

1151. A Sentence was given definitive in the Spiritual Court in a ſuit there for Tythes, *pro triplici valore*. A Prohibition was prayed. A ſpeciall Prohibition was awarded That they ſhould not proceed to the Execution of the Sentence as to the treble value, becauſe that Court is not to give the treble value but the double value onely.

*Whitlock and Hardings Case.*

1152. A man deviſed his Lands for 99. years, and after in the Will were theſe words, *viz.* Item, I give to A. my Daughter all my Lands of inheritance if the Law will permit : It was adjudged

ed that A. had a Fee-simple in the Lands, although there wanted the word Heirs, and the words shall go to the Lands, and not to the estate in Construction, and it cannot be intended an estate for life, which is of no value after 99. years.

*Sir Tho. Simonds Case.*

1153. The wife libelled against the Husband for Alimony because he beat her so as she could not live with him; a Prohibition was prayed, but denied by the Court, and it was holden in this Case that the Wife might have the peace against her Husband for unreasonable correction.

*Guy and Sedgwick's Case.*

1154. A Prohibition was awarded to the Counsell of York, because they held plea there by *English Bill* of a Debt due upon an Obligation, which is against the Law and Liberty of the Subject; and the King in such case loseth his fine:

*The King, and Bishop of Lincoln and Kings Case.*

1155. The King seised of an Advowson in the right of his Dutchy of Lanc. presented to it under the Great Seal, and not under the Seal of the Dutchy. And Resolved that the presentation was good, for the presentation is but a fruit fallen from the tree; and the King may present by word, because a presentation is but a commendation of the Clerk to the Ordinaiy.

*Case of the Coheirs of Sir William Rider.*

1156. Resolved by the two Chief Justices, and Chief Baron in the Court of Wards. That if a man makes his Will in writing; and saies then, he will adde to it or alter it, it is not his Will because not compleat nor published for his Will. But if a man makes his Will and publisheth it, and after it comes in his mind to adde to it or alter it, and sayes he will so do, but dyeth before any addition or alteration of it, the first Will shall stand.

*Walter the Dean and Chapter of Norwich's Case.*

1157. The Case was, the Dean & Chapter 37. H. 8. made a Lease for 50. years, 8. Eliz. they made a Lease to I. S. for 99. years to begin after the determination of the Lease for 50 years which expired 38. Eliz. In 42. Eliz. they made a Lease to the Plaintiff for 3. lives reserving rent, and a Letter of Atturney to make Livery and Covenanted, the Plaintiff should enjoy the Lands against the Lease made to I. S. and all claiming under him; Livery was made by the Atturney after 3. Rent dayes encurred. Resolved, that the Lease was good; and the Livery well executed by the Atturney, who is not confined to any time to make it. 2. Resolved, that the Lease for 3. lives was not void by the Statute of 13. Eliz. because the Dean and Chapter who made the Lease for 3. lives were alive and

in being; and therefore they being evicted by a Judgment upon the Lease made to *J. S.* Covenant brought by the Plaintiff against the Defendant; did well lie, and Judgment was for the Plaintiff.

*Adams and Curmins Case.*

1148. Lessee for years died *Intestate*, the Lessor entred and made a Feoffment; Administration was granted to *J. S.* who entred. It was adjudged a good Attornment, though at the time of the Feoffment, there was no Administrator in esse.

*Hill and Hills Case.*

1159. The Husband made a Lease for years, rendring rent during his Life, and the Life of his Wife. It was adjudged a good Reservation; and shall be during the Life of the Survivor of them.

1160. Words spoken of a Jury-man sworn upon Life and Death, viz. *Thou art a Jury man, and hast been the overthrow of a 100. men by thy subtille and false means.* It was adjudged that the words were actionable.

*Wilkins and Perrots Case.*

1161. A Rent was granted to *A.* and his Heirs, *Habendum* to him and his Heirs, to the use of him and his Heirs, during the Life of *J. S.* It was adjudged but an estate for Life descendable, and not a Fee-simple.

*Ghazeweth and Phillips Case.*

1162. It was Resolved in this case; that if a Lease be made upon condition to be void if 10 *l.* be not paid at a certain day, that the Grantee of the Reversion shall not enter for such a condition, because it is collateral. 2. If Lessee for Twenty years makes a Lease for Ten years upon condition, and the Lessee for Twenty years surrenders to him in the Reversion, he in the Reversion shall not take advantage of the condition, because he is in of another Estate.

*Wabrooke and Griffiths Case.*

1163. Action upon the case against an In-keeper; he pleaded that it was the custom of the Realm, that if a man put his horse to Livery to an Hostler, and the horse staid there so long that his meat amounted to the value of the horse, that he might call four of his Neighbors and value the horse, and if they conceived the meat did amount to the value of the horse, that he might detain the horse as his own. It was adjudged against the Defendant, because there is no such general custom within the Realm, but only in London and *Extra.*

*Winscomb and Pulisons Case.*

1364. *Quare Impedit*: The case was; the Incumbent lying sick of a dangerous Disease, and in apparent perill of death, it was corruptly and by Symonie agreed betwixt the Patron and S. that for 90 l. the Patron should present S. after the death of the Incumbent, or should cause him to be presented; the 90 l. was paid, and for the Security of the Presentation, the Patron granted the next Avoidance to J. S. a person nominated in trust for S. J. S. presented S. who was Instituted and Inducted. The King presented the Defendant by reason of the Statute of 31 Eliz. which made the Presentation upon the Symoniacal contract void. It was adjudged that the Presentation of the King of the Defendant was good by the Statute, and that the Grant of the next Avoidance, was but in pursuance of the Symoniacal agreement, J. S. being nominated in trust for S. 2. It was holden in this case, that if S. had died, and no other was instituted by the Patron, but the Church remained void, that the King might Present; otherwise it had been if the Patron had presented a new Parson to the Church, before the King presented.

*Pym and Gorwins Case.*

1165. It was Resolved by the Justices in this case, that one cannot prescribe for a Seat in the body of the Church, for that the Seats there, are disposible by the Parson and Churchwardens; but for a Seat in an Isle of the Church, a man may prescribe, because it may be presumed that he or his Ancestors who had house and lands within the Parish, had edified and built the said Isle, and so it was said it was adjudged in the Lady Grays case.

*Norris and the Hundred of Garmers Case.*

1166. Debt against the Hundred upon a Robbery 9. Octob. 13 Jac. the Teste of the original was 9 Octob. 14 Jac. It was said the Action was not brought within the year, for there is but one ninth of October within the year: It was the opinion of the Justices, that in this case a Fraction of a day should be by deviation of time in a day: viz. the Robbery committed 9 Oct. 13. post meridiem, is within the year of the bringing of the Writ 9 Octob. 14 Jac. in the morning. *Vide Ludford and Gressons Case. Plowd. Com. 491.*

*Dawley and Hills Case.*

1167. Upon an Information upon the Statute of 5 E. 6. an Ingrosser of Chattel justified for a certain number of Chattel, and sold upon two several Licenses without distinction, how much upon the one, and how much upon the other; and upon a Demurrer it was adjudged for the Plaintiff.

1168. Two Patrons pretended title to present; the one presented, and the Bishop refused his Clerk: He sued in the Audience, and had an Inhibition to the Bishop, and after there he obtained Institution and Induction by the Arch-Bishop: Afterwards the inferior Bishop instituted and inducted the Clerk of the other, for which Process issued out of the Audience against him; he upon that prayed a Prohibition, and a Prohibition was awarded as to the Incumbency, because the Ecclesiastical Courts have not to meddle with Institution and Induction, for that would determine the Incumbency, which is tryable at the Common Law.

## Stewkey and Butlers Case.

1169. In Trespass the case was; A. seised of the Mannor of D. made a Lease of the Scite and Demeans to the Defendant for three Lives, except all Tymber-trees, and covenanted that his Lessee should take all Woods. Afterwards the Lessor bargained and sold to the Lessee all those the Trees, Woods, and Under-woods, growing within the Mannor; viz. within the Grounds called A. B. and C. *Habendum una cum omnibus aliis arboribus*, within the Mannor, which may conveniently be spared; and the Bargainor covenanted that it should be lawful for the Bargainee at all times within five years, to enter and cut the Trees and Woods, and convert them to their own uses. In this case it was Resolved; 1. That the (*Viz.*) was void; for a (*Viz.*) may explain or distribute a thing precedent, but not restrain it. 2. Resolved that the *una cum aliis arboribus* in the *Habendum* should make a new Grant of the other Trees. 3. Resolved that the words which followed the *una cum (cessu) una cum omnibus arboribus* within the Mannor, which could be spared, was void for the uncertainty, and there is no means agreed betwixt the parties here, to reduce the same to a certainty. 4. Resolved that the Covenant of the Bargainor, that it should be lawfull for the Bargainee to take the Trees and Woods within five years, was not a Condition, but a meer Covenant; and the difference was taken, where one sells all his Trees to be taken within 5 years after, there the Vendee shall not take them after 5 years ended; but if the time of taking of them be by way of Covenant, there it shall not restrain the party to take them at all times, as well after the five years, as within the five years, but the parties are to have their remedy by an Action of Covenant upon the disturbance: Yet it was said by *Hutton*, that if one grants his Corn growing, and the Grantee doth not take it in convenient time, so as the Grantor receive detriment thereby, the Grantor shall have Action upon the case against him.

*Hansons Case.*

1170. He was cast over the Bar because he gave direction in writing to an Under-Sheriff, what persons he would have him return upon a Pannel for trial of an Issue, and named others who he would not have to be returned.

*Kingswell and Crawleys Case.*

1171. Replevin: The Defendant avowed for Rent, for that *J. S.* held of him by Fealty and Rent, whose Estate the Plaintiff had. The Plaintiff said *J. S.* enfeofed, *J. N.* who made a Lease to the Plaintiff for Life *absque hoc*, that he had the estate of *J. S.* Resolyed that the Traverse was void; for after the Statute of 21 H. 8. the party is to avow upon the Land, and then it is not material what Estate the Tenant had, so he occupied the Land; but before the said Statute, it had bin a good Plea, so as the Statute hath changed the Law for the Traverse in pleading, although there is not any word of it in the Statute.

*Andrews and the Bishop of Yorks Case.*

1172. It was Resolved, that is a good Plea in an Assize of *Darrien*-Presentment, that the Plaintiff hath a *Quare Impedit*, depending the same avoidance.

1173. Words; viz. *He hath stolen my corn out of my Barns.* Adjudged *per curiam*, the words were actionable,

*Hall and Wingfields Case.*

1173. The Defendant acknowledged a Recognizance before the Lord Hobart at Serjeants-Inn in *Fleet-Street London*, which Recognizance was enrolled in the Court of common Pleas: The Plaintiff brought debt upon this Recognizance in the Common Pleas, and layed his Action in *London*: Whether it ought to be brought in *Middlesex* where the Record of the Judgment was, or in *London*, was the Question. The Justices were divided in several opinions; *Wia. h.* it ought to be in *Middlesex*, where it is enrolled, because the Debt is consummate: *Wayborton*, it may be in any County where the party pleaseth: *Hutton* it lieth where the Record is: *Hobart* if no mention had bin made upon the Inrollment of the Recognizance before the Chief Justice at Serjeants Inn, it ought to have bin brought in *Middlesex*, but now it was in the Election of the Plaintiff, to bring it either in *London* or *Middlesex*; vide this case more at large, *Hob. Reports* 195. where the case seems to be Resolved.

*Lea and Pains Case.*

1175 Debt upon Obligation to stand to an Award. The Plaintiffs in *January* submitted themselves to stand to the award of *J. S.* for all Quarrels, Debates, Questions stirred, moved, or depending. *J. S.* in *April* made an Accord, that the Defendant should pay to the



the Plaintiff should pay Twenty Nobles in discharge of all Quarrels, &c. It was objected the Award wes void, because the Submission did not extend but to Quarrells depending at the time of the Submission, which was in *January*, and the Award is of all Quarrels, &c. which shall be intendable at the time of the Award: It was adjudged for the Plaintiff, for that it doth not appear that there were any new Quarrels risen between the Submission and the Award, and if there were any such, it ought to have been shewed on the Defendants part.

*Heard and Baskervills Case.*

1176. Rplevin; The Defendant avowed for Rent granted 12 E. 1. and shewed the dissent to such an one, whose Heir he is, but did not shew how he was Heir. It was the opinion of the Court, that he is not to shew (how Heir) in the Writ, but in the Declaration, and the shewing how Heir, is but matter of Form, because not traversable, but Heir or not Heir, is only Issueable, and therefore upon a general Demurrer it is helped by the Statute of 27 Eliz. But not pleading of the Deed of the Rent shewed in Court; or *hic in curia profert*, is matter of substance not aided by the Statute.

*Speak and Richards Case.*

1177. The Plaintiff sued Execution upon a Recognizance of 2000 l. acknowledged to him in Chancery by J. S. and others, and upon two *Nihil* returned upon two *Scire fac.* in *Middlesex*, a *Levari* issued to the Sheriff of S. the Defendant who returned he had levied 500 l. towards the satisfaction of the Plaintiff, and that he had it ready to deliver to the Plaintiff; and because upon this Return, upon request of the Plaintiff he had not paid it him, he brought Debt against the Sheriff. The Defendant as to part of the 500 l. viz. 300 l. pleaded *nihil debet*; to the 200 l. he pleaded payment, and shewed an Acquittance: the Plaintiff demurred; Judgment was given for the Plaintiff for the 300 l. and for the 200 l. *nihil capiat per breve*, because the Récept and the Acquittance is confessed by the Demurrer.

*Dawson and Barkers Case.*

1178. Information upon the Statute of 5 Eliz. for using the Trade of a Bakes within the city of *Norwich*, not having been an Apprentice seven years. It was said that no penalty did rise to the Informer, for a penalty which did accrue within the city of N. by reason of this branch in the Statute, viz. *All Amercements, Fines, Issues, and Forfeitures, which arise within any City or Town corporate, shall be levied, gained and received by such persons as shall be appointed thereunto by the Mayor, &c. to the use of the same Cities.* The Justices

Justices were divided in their opinions, *vide* *Craze* 1. *part* 130. and *Hob. Reports* 183. where this Case seems to be Resolved.

*Ryres and Mophams Case.*

1179. Action upon the case, that he lent the Defendant his Mare at C. to plow the Defendants Land at P. and safely return her two days after, and the Defendant overwrought her so that she died. The *Venire* was of C. only, where the Mare was delivered, and not where she was labored, and therefore the Judgment was reversed.

*Harbin and Greers Case.*

1180. Action upon the case: A custom was alledged, That all the Inhabitants of certain Messuages holden of the Bishop of S. had used to grind their Corn which they used to spend in their houses, or should sell at certain Mills called the Bishops Mill in S. and not elsewhere without the License of the Bishop. It was adjudged the custom is void and unreasonable to grind all their Corn, which they should sell.

*Dembyn and Browns Case.*

1181. A Rent was jointly granted to husband and wife; the husband died, the wife took Administration of his Goods, and as Administratrix brought Debt for the Arrearages incurred in the Life of her husband. Adjudged the Arrearages were due to her *in jure proprio*, and the naming of her Executrix of her Husband was Surplusage.

*Wolley and Davenants Case.*

1182. A *Scire fac* against the Bail: he pleaded that the Principal *reddidit se*. Adjudged it shall be tried by the Record, and not by the Country; and if the party render himself at the Bar, and the Attorney of the Plaintiff is not there to pray him to be committed, he shall be committed *ex officio* by the Court.

*Roberts Case.*

1183. A man 25 H. 8. seised of an House and Lands, made his Will in these words, *viz.* I bequeath to L. my wife my house in P. with all the Lands thereunto belonging, during her Life; and after her decease I make A. B. C. and D. Feoffees in the said House and Lands, to see the house kept in reparations, and the rest of the profits of the same Rents after the discretion of the said Feoffees, to be bestowed yearly upon the Reparation of the High-ways of W. and the Town. The Devisor and his wife being both dead. It was a Question, the Will being made before the Statute of 32 H. 8. and the Land not in use, whether it be an appointed Limitation or Assignment within the Statute of 43 Eliz. of Charitable uses. It was Resolved that the said

Said intended Devise was a Limitation, or an appointment to a Charitable use, to be relieved within the said Statute of 43 Eliz.

*Sir Tho. Middletons Case.*

1184. *Sir Thomas Middleton* received 3000 l. from *Queen Eliz.* for the payment of the Soldiers which returned in the voyage made by *Sir Francis Drake* and *Sir John Hawkings*: The Captains, Mariners, and Soldiers made a voluntary constitution that every Mariner and Soldier should abate so much a month out of their pay to be employed for the relief of the Mariners and Soldiers which were maimed or hurt in that Service, of which abatement there was 300 l. in the hands of *Sir Thomas Middleton*. It was Decreed upon a Commission upon the Statute of 43 Eliz. that this 300 l. was a charitable use within the Statute, and *Sir Thomas* was decreed to pay the money to the said use.

*Rivers Case.*

1185. A Copyholder in Fee devised 14 Acres of his Copyhold Lands to his Son and his Heirs upon condition to employ the profits thereof for the Relief of the poor of S. for ever, and died, no surrender being made to the use of his Will, either before or after. *J. S.* purchased this Copyhold Land, upon a Commission upon the Statute of 43 Eliz. this charitable Use was found, and that the profits had not been employed accordingly. It was decreed that the Purchaser having notice of the said charitable use, should pay 12 years arrearages, according to the value of the Land at 7 l. 10 s. per annum, to be paid for ever by the Purchaser and his Heirs, for the relief of the Poor, and that he and his Heirs should hold and enjoy the Lands for ever.

*Vorbel and Dancaells Case.*

1186. In Debt for Rent, upon a Lease for years; the Defendant pleaded, that the Lease was made to one *H.* and the Defendant, and that *H.* his Companion, 1 Jac. before the Lease made, acknowledged a Statute to *J. S.* of 200 l. who died, and that his Executors sued execution upon the Statute, and that the Plaintiff the Lessor being Sheriff, returned that *H.* was seised of the Land in Fee, at the time of the Statute acknowledged; and that he ousted the Defendant, and put the Executors in possession of the Land, and demanded Judgment if upon this answer so returned by the Plaintiff himself, he should pay the Rent; and because he did not shew that an Inquisition issued and was taken for the extent, the eviction pleaded of the Lease was not good, and Judgment was given for the Plaintiff.

1187. *A.* was possessed of a Ship lying at Anchor at *Lym-house*; *J. S.* a Merchant of *Lym* seised the Ship with the Tackle at *Lym-house*, and

and sued *A.* in the Court of Admiralty, setting forth that he was possessed of the Ship upon the Sea *infra jurisdictionem Curie Admiraltatis*. A Prohibition was granted in this case, for that it did not appear to the Court that any wrong was done upon the Sea; and they agreed that *Lyn-house*, was *infra corpus Comitatus*, and not within the Jurisdiction of the Admiralty.

*Lee and Arrowsmiths Case.*

1188. Debt for 300 *l.* and counted upon many Emissets, and upon a *Simul computasset*, and that all the particular Sums amount to 300 *l.* The Jury found Debt for 40 *l.* only, and no debt for the residue; there were variances betwixt the original which was 300 *l.* and the particulars which amount to 29 *l.* The Court said it was no default in the Clerk, but in the Client himself, who did not well instruct him in the particulars; but upon the Oath of the Attorney, that he instructed the Clerk to declare upon all the Emissets, and to make a supply upon the *Insimul computaverint* of the Residue, the Declaration was amended, and Judgment was given for the Plaintiff.

*Loder and Samuel's Case.*

1189. In a Replevin: the Defendants avowed for an Amercement of 10 *l.* assessed in a Leet for not repairing of a way, which by custom they ought for to repair; It being found for the Avowants, the Jury assessed costs and damages. It was objected that the costs and damages ought not to be given by the Statute of 21 H. 8. which did not extend to Amercements in Turnes or Leets; but it was holden the costs and damages were well assessed; *vide Cook's part, Greaslys Case, and Joyner's Case*, that the Avowment for an Amercement in a Leet, should have costs and damages.

*Sir George Sherly and Underbill's Case.*

1190. *Quare impedit*; The Plaintiff declared, that he was seized of the Mannor of *N.* and that the Advowson of the Vicarage was appendant to the Mannor. The Defendant made title to the Advowson as appendant to the Rectory impropriate of *N.* and then it came to the Crown by the Staute of Dissolution; and that the Queen granted to him the Rectory with the Advowson of the Vicarage, *absque hoc* that the Advowson of the Vicarage was appendant to the Mannor. Resolved, that the Advowson of the Vicarage of Common right is Appendant to the Rectory, but it may be Appendant to the Mannor as if the Rectory before the appropriation was Appendant to the Mannor, the Advowson of the Vicarage may well be reserved to the Patron, and so shall be Appendant as the Advowson of the Rectory was.

## Eye and Baaniffers Case.

1191. *In ejedione firme*, A challenge was to the array because the Sheriff was chosen by the Lessor, it was adjudged it was no principal challenge, but a challenge for favour only. But it was said in this Case, That if the Lease had been ended to be made for tryall of the Title, and that the Action was preferred at the costs of the Lessor, then been a principal challenge, but not without such amendment.

## Paton and Charles Case.

1192. Debt by an Administrator of *Elianora*, upon an Obligation the Defendant said the intestate in her life by the name of *Elen* released to him all Debts and demands. The Plaintiff replied, *Nou est factum Elianora*, which was so found by verdict; It was said that the same being matter in Law ought not to have been found by verdict. Resolved that none can make an Obligation, or other writing by a contrary name of Baptisme, and said that *Nou est factum* was a proper Issue, and that the Jury had found according to Law, and if the Jury had found the special matter, yet it should not be adjudged to Bar the Plaintiff.

## Dibly and Doares Case.

1193. Trespass by the Plaintiff against *Tho. Doare* and *Barthol. Doare*, and the Plaintiff declared in Trespass against *Tho. Clausum fregit & averia cepit & imparcavit*. It being found for the Plaintiff, many exceptions were taken in stay of Judgement, viz, the Declaration was, that *Tho. simul cum Bartholomew*, *Clausum fregissent*, in the plural number. 2. That the Register is, *& curia sua sine rationabili causa imparcavit*, which works (*sine rationabili causa*) were committed in the Declaration. 3. One of the Juries names in the venire was written *Edrus* without any dash, and in the distresse was *Edwardus*, all which exceptions were over-ruled by the Court, and Judgment was entered for the Plaintiff.

## Celt and the Bishop of Coventry and Litchfields Case.

1194. *Quare Impedit*. The Plaintiffs declared that *W. H.* was seised of the Advowson of *Clifton Camvile* in Fee, and granted the next Avoidance to them, and that the Church became void by the death of *W. W.* for which they presented, and the Defendant did disturb them: The Defendant said that *W. W.* was Incumbent, and accepted another Benefice of the value of  $\text{£}4$ , by which the first became void, and pleaded the Statute of 25 H. 8. of Dispensations to be granted by the Archbishop, and that the Archbishop granted to him a Dispensation, to hold the Church with his Bishoprick, and with one or more Benefices with *Cura in commendam*, of what quality, value, or dignity, with a Proviso, and all those taken in commendam, did

did not exceed 200 l. in the Kings Books, and pleaded the confirmation of the Dispensation by the King under the Great Seal; and that he took this Benefice; and traversed that the Church was void by the death of W. W. upon which Plea the Plaintiffs demurred in Law. The Case for matter of difficulty was adjourned out of the Common Pleas into the Exchequer Chamber; there it was argued by eight of the Judges, that Judgment ought to be given for the Plaintiff, and that both the Dispensation and the Commendam granted to the Bishop, were void in Law, and that principally for seven Reasons, *Vide* the Causes and Reasons in the Abridgment of this case, out of Hobarts Reports, fol. 141. to 164: and Abridgment in my Grand Abridgment, in the Title of Appropriations, fol. 206, 207, 208. to which I refer you.

*Cases of Prohibition.*

*Moyle and Smiths Case.*

1195. Suit was by Husband and wife in the Ecclesiastical Court for calling the Wife Witch; a Prohibition was prayed and denied, because a Defamation for which no Action could lie at common Law; *Quare*, for since 1 Jac. an Action at Law lies for the Words.

1196. Upon a Suit to revoke an Administration, the Judge in the Ecclesiastical Court, would have examined the party upon Covenants, and what Land he had by descent, and a Prohibition was awarded.

*Collier and Colliers Case.*

1197. The Spiritual Judge would have examined the parties in a Suit of Incontinency upon their Oaths, if they committed the Fact or not, and a Prohibition was awarded.

*Manns Case.*

1198. He was sued in the Spiritual Court, for the marrying of one of his wives sisters Daughters, and a Prohibition awarded, because such marriage is forbidden by the Levitical Court.

*Sherburn and Clarks Case.*

1199. Suit was in the Spiritual Court for the Tythe of wood, in a Park: There was a surmise for a Prohibition; that a *Modus* had bin paid time out of mind to the Vicar for the Tythes of the Wood there; the Parson sued in the Spiritual Court, and because the right of Tythes came in debate betwixt the Parson and Vicar, a Prohibition was denied by the Court.

*Fryer and Bestreys Case.*  
 1200. The Question was in the Spiritual Court, whether the Tythe Hay did belong to the Parson or the Vicar, a suggestion being of a *Modus* to be paid to the Vicar. It was doubted if a Consultation should be in the case; the ground of the Prohibition, being a *Modus decimandi*.

*Bagnall and Strokers Case.*  
 1201. A Prohibition was granted after a Sentence in the Spiritual Court, for a Legacy in a Suit where a Release was pleaded, and they refused to allow of it, because proved but by one Witness.

*Foster and Peacocks Case.*  
 1202. Resolved that for Birch, above the age of Twenty years growth, Tythes should be paid.

*Wray and Clenches case.*  
 1203. Resolved, That of small Oakes, under Twenty years growth, apt for Tymber in time to come, shall not pay Tythes.

*Rox and Patisons Case.*  
 1204. Of Decayed Trees, although converted to Fire-wood, Tythes shall not be paid.

*Broke and Rogers case.*  
 1205. Resolved, Tythes shall not be paid of the toppings and loppings of Trees, which are *aride, cave, & in culmine putride*, where the Bodies of the Trees being Tymber, are discharged being 20. years growth, of Tythes.

*Sorell and Woods Case.*  
 1206. The Clerk of a Parish prescribed that he and his Successors had used to have 5 s. per annum of the Parson for the Tythes of a certain piece within the Parish, and a consultation was awarded, because a Clerk Deane and Removeable cannot prescribe.

*Libb and Watts Case.*  
 1207. Resolved that Tythes shall not be paid of Slates, nor of the Quarreys of Slate or Coale.

1208. A Prohibition was prayed where the Parson sued in the Spiritual Court for Tythe of Pigeons, and awarded to stand, because the Court thereof would not allow their proof without two Witnesses.

*Bedingfield and Feakes Case.*  
 1209. The Parson had the great Tythes, and the Vicar *modicus decimas*; Land within the Parish was sowed with Saffron; the Vicar sued in the Spiritual Court for the Tythe of the Saffron.  
 Resolved,

Resolved, *Safforn* is *minuta decima*, and the Vicar shall have it, although the Land had paid Tythe corn before.

*Sherington and Fleetwoods Case.*

1210. Resolved that Land that was not barren of its own nature, but is become unprofitable by ill Husbandry or negligence, is not privileged by the Statute of 2 Ed. 6. to be discharged for the first seven years of Tythes.

*Austin and Lucas Case.*

1211. Resolved, That of Broom or Fewel spent in a House within the Parish, Tythes shall not be paid.

*Axberies Case.*

1212. Suit was in the Spiritual Court for the Tythe of the Aftermowing of Grass, and upon a Surmise that the Occupiers of the Land had used to make the first cutting of the Grass into cocks for Hay, and to pay the Tenth cock thereof in satisfaction of the first and after-mowing, a Prohibition was awarded.

*Green and Handlies Case.*

1213. Resolved, Tythes shall not be paid of the Rakeings of corn, unless it be a covenous Raking to deceive the Parson. 2. That it is a good custom to pay the Tythe wool at Lammas day, though it be due upon the clipping. 3. That for the Pastorage of young barren Cattel preserved for the Pail or Plough, no Tythe shall be paid. 4. That a Prescription to pay a penny called a Hearth-penny, in satisfaction of the Tythe of all combustible wood, is a good Prescription.

*Blincoes Case.*

1214. Resolved if the Vicar be endowed of all Petty Tythes of all the Lands within the Parish, yet he shall not have Tythes of the Gleab of the Parson; for *Ecclesia Ecclesie decimare non debet*. But if the Parson Lease out his Gleab, the Vicar shall have *minutas decimas* of the Lessee.

*Grasbam and Lucas Case.*

1215. Suit in the Spiritual Court for the Tythes, of Milchkyne, Steers, Oxen and Horses; A Surmise was made to pay one penny for every milch Cow, a half-penny for every other Cow, and a half-penny for every Mare, in satisfaction of all Cows, Horses, Steers, and other Chattell. A special consultation was awarded,  *dummodo non tractatur de vaccis mulcibilibus, bobis Caruca, nec bestijs agilis proprio fisco domus.*

1216. A Custom to pay a half-penny for the Worl *de ovibus venditis*, after shearing, and before Mich. was adjudged a good custom, Mich. 38 Eliz.



*Austin and Pigotts Case.*

1217. It was surmised in the Spiritual Court, that the Parson had twenty Acres of Pasture, ten Acres of Wood in satisfaction of all the Tythes of the Land in demand; he failed in the precise proof of his whole Surmise; for he proved the twenty Acres of Pasture, but not the ten Acres of Wood; and a Prohibition was granted, and it was said it was not material to shew by what Title the Patron had the Land; but if he had the same in any other manner, the Parson is to shew it, and a Prohibition was granted.

*Green and Pipes Case.*

1218. Suit was for the Tythes of an house in London; a Prohibition was paid upon a Surmise that the house was a Priory which was discharged of Tythes by the Popes Bull, and the Statute of 31 H. 8. which gave their Possessions to the Crown; did ordain that the King and his Patentee of such Lands, should be discharged of Tythes; yet a consultation was awarded, because by a Latter Statute viz. 37 H. 8. c. 1. all houses in London shall pay Tythes according to their Ordinances, and that Statute extends to all houses, and none excepted but the house of Noblemen.

*Leigh and Woods Case.*

1219. Resolved if the Owner sets forth his Tythes, and a Stranger takes them, no Suit shall be for the same in the Spiritual Court. But if the Owner himself, after he hath once set forth his Tythes, takes them away again, the Parson may sue him in the Spiritual Court for the Tythes.

*Beadle and Stermons Case.*

1220. Resolved that an Action upon the Statute of 2 E. 6. for not setting forth of Tythes, lieth by the husband and wife in the Temporal Court, and so it was adjudged in *Wentworth* and *Crispes* case, which vide there.

*Stebbs and Goodtriks Case.*

1221. The custom of L. in the County of B. was alledged that the Parson ought to have the Tenth Land of corn, beginning at such Land which was next to the Church; the Occupiers of the Land, to defraud the Parson by Covin, did not sow their Tenth Land nor manure it; The Parson sued for Tythe in Kinde to have the tenth Cock for Tythe of the Corn sowed, and a Prohibition awarded, notwithstanding the Covin, because he had remedy at the common Law for the Fraud, and a Prohibition was awarded.

*Quarles and Sparings Case.*

1222. The Temples were dissolved, and their Possessions and Priviledges by Act of Parliament 17 E. 2. transferred to *St Johns of Jerusalem*, and their Possessions by Act of Parliament 32 H. 8.

cap. 24. given to the King: It was Resolved that the King and his Patentees should pay Tythes of those Lands, although the Lands *propria sumptibus excolantur*, because the Priviledge to be discharged of Tythes, is proper to Spiritual persons, and ceaseth when the person Spiritual is removed: And the Statute of 31 H. 8. of Dissolution did not extend to such Lands as came to the King by special Act of Parliament, as these Lands of St. Johns of Jerusalem did.

Bakers and Rogers Case.

1223. The Church being void, B. contracted with the Patron for 1804. to have the Presentation, and thereupon presented W. his Brother, who knew nothing of the Symonaical contract, till after his Induction; notwithstanding he was deprived in the Spiritual Court, because he was *Symoniace promotus*; and it was holden in this case, That if a Usurper present by Symonie, the Clerk is punishable in the Spiritual Court for the Symonie, although the Patron doth recover the Advowson, and the Presentation.

Sir Richard Chapman and Hills Case.

1224. Debt brought upon the Statute of 2 E. 6. for not setting forth of Tythes, and declared upon two Leases, one of the Parson who had two parts, and another of the Viccar who had the third part: The Defendant pleaded Not Guilty, which was found against him. It was moved in stay of Judgment that Not Guilty, was no Plea, but *Nihil debet* ought to be pleaded, and that the Plaintiff ought to have brought several Actions, being several Demises; both Exceptions over-ruled by the Court. 1. That Not Guilty was a good Plea, 2. for that the Suit was for the wrong, as well as upon the Title.

Day and Peckwell's Case.

1225. It was Resolved in this case upon the Statute of 2 Ed. 6. that the Statute giving Treble Damages, the Jury cannot give other damages. 3. That the Jury cannot give Costs. 3. That two Farmers may joyn in one Action upon this Statute. 4. That a Farmer shall have an Action upon the Statute, although the Statute doth not give him an Action by Equity of the Statute, because he hath the right to the Tythes, and the agreement with one Farmer, shall bind his Companion.

The Queen and Blanches Case.

1226. Resolved that the Certificate of the Bishop, that the Incumbent refused to pay his Tenth, is not Peremptory but Traversable; and that the demand of the Tenth must be at the house of the Incumbent, and the refusal there.

*Kelley and Walkers Case.*  
 1227. Suit was in the Spiritual Court, for laying violent hands upon a Clerk. It was surmised there that the Clerk assaulted the Plaintiffs Servant, for which the Plaintiff peaceably laid his hands upon the Clerk, which allegation they would not allow of there, and a Prohibition was awarded, notwithstanding the Statute *de Articulis Cleri*.

*Sir Robert Lane and Pigotts Case.*

1228. It was Resolved in this case, that if Lessee for years be sued in the Spiritual Court for Tythes, he in the Reversion may have a Prohibition.

*Smith and Sherburnes Case.*

1229. The Incumbent being sick, the Father contracted for 100*l.* in the presence of his Son for the next Avoidance, and after the Incumbent died, and the Father presented his Son; after Induction he was sued in the Spiritual Court, to be deprived; he pleaded the General Pardon of 35 *Elix.* in which Symonie was not excepted. It was the opinion of the Justices, that notwithstanding he was deprivable there; and in this case it was adjudged that the Presentment of the Father of the Son, was Symonie.

*Reynolds Case.*

1230. The Church-warden and Parson; that all those who had the house wherein the said *Reynolds* did dwell, had used to find meat and drink for them and the Parson, going in Procession in Rogation week, at his house; and because he did not find them meat and drink, he sued them in the Spiritual Court, and a Prohibition was awarded, because the custom was a custom against the Law.

*Dorringtons Case.*

1231. He sued in the Admiralty, because his Ship called the *S.* lying upon the *Thames* at *Rediff* at anchor, was there broken by the Ship called the *Aneas* by the negligence of the Officers thereof; and a Prohibition was awarded, because the *Thames* is *infra corpus Comitatus*, and not within the Jurisdiction of the Admiralty.

*Saccars Case.*

1232. Resolved that a Prohibition is awardable against any who waste the Houses of the Parson the Incumbent, or cuts down the Trees, or doth other waste.

*Lanes Case.*

1233. Resolved Tythes shall not be paid of Wood under 20. years growth, which is employed in hedg-poles, for repairing of the Coppices.

*Biggs Case.*

1234. Resolved, where a Prohibition is awarded upon a Suggestion of a *Modus Decimandi*, and a consultation awarded for not proving the Suggestion within six months, there a new Prohibition shall not be awarded upon an Appeal in the same Suit.

*Babingtons Case.*

1235. Resolved, If one be sued in the Spiritual Court *ex officio*, or by Libel, and he demands the Copy of the Libell which is denied, that a Prohibition lieth in such case, *vide Statute 2 H. 4.*

*Lloyd and Maddox Case.*

1236. An Executor was sued in the Spiritual Court for a Legacy, who pleaded a Recovery in debt against him at the common Law, *ultra* which to satisfy, he had no assets: The Plaintiff there said the Recovery was by Covin, and that the Plaintiff who recovered the Debt, offered to discharge the Judgment, and the Defendant would not do it. Resolved that the Covin was properlie examinable in the Spiritual Court, because the Legatee could not sue for the Legacy at the common Law, and therefore a Prohibition in this case was denied.

*Barnard and Bridgmans Case.*

1237. Resolved in this case, that if the Master of a Ship gage a Ship in *Spain* for 50 *l.* and for that the Ship is attached in the *Thames* at its return, the Owner of the Ship shall have a Prohibition; otherwise if the Ship be engaged for necessary Tackle, the Owner shall pay it.

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F I N I S.

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[illegible]

1. The common law of England is the basis of the law of the United States. The common law is a body of law that has developed over centuries in England. It is based on the principle of stare decisis, which means that courts are bound to follow the decisions of higher courts. The common law is also based on the principle of precedent, which means that courts are bound to follow the decisions of their own previous cases. The common law is a flexible system that can adapt to changing circumstances. It is also a system that is based on the principle of justice. The common law is the foundation of the legal system in the United States. It is the basis of the law that governs the lives of all Americans. The common law is a system that has been refined over centuries and it is a system that continues to evolve. The common law is the heart of the legal system in the United States. It is the foundation of the law that governs the lives of all Americans. The common law is a system that has been refined over centuries and it is a system that continues to evolve. The common law is the heart of the legal system in the United States.

The following information was obtained from the records of the Department of the Interior, Bureau of Land Management, regarding the land owned by the United States in the State of California:

1. The total area of land owned by the United States in California is approximately 100 million acres.

2. The majority of this land is located in the western part of the state, particularly in the Sierra Nevada mountains and the coastal regions.

3. The land is managed by various agencies, including the Bureau of Land Management, the National Park Service, and the Forest Service.

4. The land is used for a variety of purposes, including recreation, conservation, and agriculture.

5. The value of the land is estimated to be over \$1 billion.

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